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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
RESIDENTIAL CAPITAL, LLC, et al.,	:	Case No. 12-12020 (MG)
Debtors.	:	Jointly Administered

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO AD HOC GROUP OF JUNIOR SECURED NOTEHOLDERS' DISQUALIFICATION MOTION

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TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the "Committee") of Residential Capital LLC ("ResCap") and its affiliated debtors and debtors-in-possession (collectively, the "Debtors") hereby files this objection to the motion (the "Motion" or the "Disqualification Motion") filed by the ad hoc group (the "Ad Hoc Group" or the "JSNs") of holders of those certain 9.625% Junior Secured Notes due 2015 (the "Notes") seeking, among other things, the limited disqualification of counsel to the Committee and the Debtors.

PRELIMINARY STATEMENT

The Disqualification Motion seeks to impose a destructive remedy for a non-existent problem. The Plan now on file nearly triples AFI's prior-negotiated contribution to the estates, permitting significant increases in the previously anticipated recoveries for all creditors, including the JSNs. The Plan is the result of an intense, five-month Mediation involving the Committee, the Debtors (led by their CRO), and the Consenting Claimants under the guidance of Judge Peck. Although the JSNs chose not to participate in the Mediation, their treatment under the resulting Plan is favorable: they would receive a 100% recovery in cash on their allowed prepetition claims, plus the opportunity to receive postpetition interest if found to be oversecured. The Court has established a pre-confirmation litigation track that, together with the confirmation hearing, fully protects the JSNs' rights to litigate every issue affecting them.

The JSNs' dissatisfaction with their treatment is ironic given that just over a year ago, an ad hoc group of the noteholders and their legal and financial professionals signed off on a plan support agreement based on a much smaller $750 million settlement with AFI that did *not* assure them of full recovery of the principal amount of their claims. To obtain this result, the group supported an expedited plan and asset sale timeline that would have yielded unsecured

creditors a *de minimis* recovery, waived postpetition interest, and disallowed intercompany claims in the event the JSNs received full payment of their prepetition claim. Needless to say, the JSNs at the time expressed no concerns about the Debtors' professionals or management negotiating or prosecuting a plan on behalf of all estates.

Despite their significantly improved treatment under the current Plan, the JSNs have now filed a motion that is nothing less than reckless. The relief sought would render prosecution of the Plan impossible, cause milestones to be missed, and likely disrupt the unprecedented settlement with AFI and the Consenting Claimants that made possible a largely consensual plan with substantially increased payments to all creditors, including full recovery for the JSNs. With the current professionals disabled and a platoon of new ones dispatched to represent each of the 51 Debtors (and, presumably, separate creditors' committees for each Debtor), these cases would be plunged into hopeless warfare over numerous intercreditor and interdebtor issues, all of which will be settled in connection with the Plan. For example, the parties would have to revisit billions of dollars of prepetition debt forgiveness and other intercompany transactions that could not be resolved without risking the estates becoming administratively insolvent – much as the JSNs predicted in the days before announcement of the global deal. Substantive consolidation would become a real possibility, in which case intercompany claims would be eliminated, the JSNs' guarantees would be extinguished, and the JSNs would receive far *less* than the principal amount of their claims.

The JSNs know all this, yet free of the fiduciary duties they purport to prize in others, they filed the Motion anyway, to threaten the estates with a doomsday scenario and attempt to extract postpetition interest without having to prove their entitlement thereto. It should be denied for several independent reasons.

- First, the Motion should be denied as untimely and transparently tactical. The JSNs have known for months that the Debtors and the Committee were acting globally for their respective constituencies in negotiating a potential resolution of all of the interdebtor and intercreditor issues that have burdened these estates since the petition date. They stood by through the appointment of a mediator and a CRO and never pursued a claim that the Debtors were conflicted. It is simply too late – and reflects a lack of good faith – for the JSNs to allege false conflicts at this advanced stage.

- Second, while the JSNs will have a full opportunity to litigate their substantive objections to the Plan, they cannot now object to the Debtors and the Committee *prosecuting* the Plan in light of the Court's findings, in approving the Plan Support Agreement (the "PSA"), that the Debtors and the Committee acted in good faith in entering into the PSA and that they should be authorized to file and prosecute the Plan.

- Third, the Motion ignores that there is no present conflict among the Debtors because – following extensive input from creditor constituencies and the leadership of the CRO – all of the Debtors support the settlement and Plan. Any argument that the settlement *process* was tainted by conflicts, to the extent not foreclosed by the PSA order, constitutes a confirmation objection, not a ground for disqualification going forward.

- In any event, the underlying conflict allegations are entirely phony. The settlement was not unilaterally imposed by the Debtors or the Committee but hammered out through intense negotiations among numerous real parties in interest under the supervision of Judge Peck. The Debtors and the Committee reasonably concluded, with the concurrence of all the parties to the mediation, that the intercompany claims suffered significant infirmities, were vulnerable to substantial defenses and setoffs, and would be hugely burdensome and impractical to litigate. Those claims were not simply waived, but resolved as part of a comprehensive settlement that compensated the JSNs for any value conceivably lost by offering them payment in full in cash on the effective date. This is better than any result they could hope to obtain if they litigated their alleged right to enforce liens against intercompany claim proceeds rather than accepting the AFI settlement.

- Finally, the JSNs do not coherently allege *any* conflict on the part of the Committee, which did not settle the claims or purport to act on behalf of any Debtors, but is merely advocating for a settlement overwhelmingly supported by every major unsecured creditor constituency.

In short, the JSNs neither identify an actual problem nor prescribe a workable solution, and they do not articulate a rational path for this case after they blow up the current settlement. The Motion should be denied.

BACKGROUND

A. The Ad Hoc Group and the Original Plan Term Sheet

1. The members of the Ad Hoc Group, according to the group's most recently filed Rule 2019 Statement [Dkt. No. 3770], are holders of approximately $1.05 billion in Notes. The Notes were issued by ResCap and are guaranteed by certain other Debtors, including Residential Funding Company LLC ("RFC") and GMAC Mortgage LLC ("GMACM"). The Notes are secured, though the extent of the liens securing the Notes (among other issues) is currently the subject of litigation among the Debtors, the Committee, and the Ad Hoc Group. *See generally* Adv. Case Nos. 13-01343, 13-01277.

2. Prior to the commencement of these chapter 11 cases, certain holders of the Notes, represented by the same legal and financial advisors to the Ad Hoc Group as currently constituted, entered into a plan support agreement (the "JSN PSA") with the Debtors and their corporate parent, Ally Financial Inc. ("AFI").[1] Eight of the original twelve members of the Ad Hoc Group remain with the group, which has also added seven new members (for a total of fifteen) since the group's initial Rule 2019 Statement was filed. *Compare* Rule 2019 Statement dated 6/14/2012 [Dkt. No. 378] *with* Rule 2019 Statement dated 5/17/2013 [Dkt. No. 3770].[2]

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[1] The JSN PSA is attached as Exhibit 9 to the first-day affidavit of James Whitlinger (the "Whitlinger Affidavit") [Dkt. No. 6].

[2] The group's holdings have increased slightly, from $918.8 million to $1.05 billion. *Id.*

3. The JSN PSA contained several key elements. First, the consenting holders of the Notes (the "Consenting Holders") agreed to waive postpetition interest through December 31, 2012. JSN PSA § 5.4(a). Second, the Consenting Holders agreed to a plan term sheet (the "Original Plan Term Sheet") under which intercompany claims against the consolidated "RFC Debtors" would be disallowed entirely and intercompany claims against the consolidated "ResCap Debtors" and "GMACM Debtors" would be disallowed if the Notes were otherwise paid. *See* Original Plan Term Sheet at 7, 10, 12.[3] Third, the JSN PSA imposed aggressive milestones contemplating the filing of a plan and disclosure statement a month into the case, approval of a disclosure statement and solicitation procedures within three months, and confirmation of a plan or approval of proposed asset sales by year end. *See* Exhibit B to JSN PSA (listing milestones). Finally, the plan the Consenting Holders agreed to support was premised on an AFI contribution of $750 million, to be allocated in the Debtors' sole discretion in a manner consistent with the various plan support agreements. Original Plan Term Sheet at 4.

B. Events Leading to Proposal of the Current Plan

4. As the Court is well aware, following the Petition Date, the Committee initiated extensive investigations of a variety of issues, including potential claims against AFI and the merits of the Debtors' proposed settlement with certain institutional investors in the Debtors' RMBS Trusts. In addition, at the request of Berkshire Hathaway, Inc., a major holder of the Notes, an Examiner was appointed to investigate prepetition transactions among the Debtors and AFI. *See* Dkt. No. 536. As a result of these investigations, the Committee concluded that the proposed $750 million contribution from AFI was woefully inadequate. The Committee further determined to object to the RMBS Trust Settlement, concluding, among other

[3] The Original Plan Term Sheet is included in Exhibit 8 to the Whitlinger Affidavit.

things, that issues concerning the size and allocation of the Trusts' claims were more appropriately resolved in the context of a global settlement and plan.

5. As the case progressed and the full extent of the intercreditor disputes became more apparent, the Debtors' initial hopes of confirming a plan by the end of 2012 became increasingly unrealistic and the Debtors were forced to seek several extensions of exclusivity. The Court noted at a December hearing that the cases threatened to devolve into "nuclear war." Transcript of Hearing at 45:3, *In re Residential Capital, LLC*, Case No. 12-12020 (Bankr. S.D.N.Y. Dec. 20, 2012). To avert this crisis and foster development of a consensual chapter 11 plan, the Court appointed the Honorable James M. Peck as Mediator in December 2012 and Lewis Kruger as CRO in March 2013. *See* Dkt. Nos. 2519 & 3103.

6. Following Judge Peck's appointment, all of the major constituencies in these cases – with the exception of the JSNs – engaged in extensive negotiations concerning the development of a consensual chapter 11 plan.[4] Spanning nearly five months, the negotiations consisted of near-daily calls among the parties and between individual parties and Judge Peck, as well as dozens of in-person meetings at the offices of Morrison & Foerster and Kramer Levin involving all parties and the Debtors' CRO. The JSNs elected not to participate.

7. On May 13, 2013, the parties to the Mediation announced that they had agreed on the terms of a global settlement pursuant to which AFI would increase its contribution to the Debtors' estates by $1.35 billion, to $2.1 billion. The agreement was memorialized in a Plan Support Agreement, a Plan Term Sheet, and a Supplemental Term Sheet, which were presented to the Court for approval by motion dated May 23, 2013. The parties to the agreement

[4] The negotiations are described in the Declaration of Lewis Kruger submitted in connection with the Debtors' motion to approve their entry into the PSA. *See* Dkt. No. 3814-3.

included AFI, the Debtors, the Committee, and certain Consenting Claimants representing every major constituency in these cases other than the JSNs. The Court entered an order approving the Debtors' entry into the Plan Support Agreement on June 26, 2013 [Dkt. No. 4098], and the Debtors and the Committee, as co-proponents, filed their Joint Chapter 11 Plan (the "Plan") and accompanying proposed disclosure statement (the "Disclosure Statement") on July 3, 2013. *See* Dkt. Nos. 4153 & 4157.

C. The Chapter 11 Plan

8. The Plan resolves, on a consensual basis, nearly all of the major intercreditor disputes that have plagued these cases and provides for greatly enhanced distributions to creditors in comparison to the plan contemplated by the Original Plan Term Sheet that the JSNs had supported at the outset of these cases. The Plan calls for dramatically improved treatment for the JSNs over their prepetition deal: payment, in cash, of the full principal amount of the JSNs' claims (including accrued prepetition interest). To the extent the JSNs establish entitlement to postpetition interest, the Plan calls for it to be paid as well.

9. Like the plan contemplated by the Original Plan Term Sheet, the Plan calls for the partial consolidation of the Debtors into three Debtor groups: the ResCap Debtors, the GMACM Debtors, and the RFC Debtors. As explained in the Disclosure Statement:

> The majority of the assets of the Debtors' Estates reside at ResCap, GMACM, and RFC, with the Debtor subsidiaries within each Debtor Group having little to no assets available for distribution to Creditors. In addition, the majority of Claims asserted against the Debtors are asserted against ResCap, GMACM, and RFC, with, in limited circumstances, de minimis Claims asserted against the other Debtor subsidiaries within a Debtor Group. Accordingly, based upon the Plan Proponents' analysis, no creditors are harmed by the proposed limited consolidation of the Debtors into the Debtor Groups for distribution purposes under the Plan.

Disclosure Statement at 34.

10. As part of the global settlement under the Plan, intercompany claims are waived but any value thereby allegedly lost by the JSNs is more than compensated for through their Plan treatment. As set forth in the Disclosure Statement, the Debtors conducted an extensive analysis of intercompany balances, considering such issues as subordination, set-off, recharacterization, substantive consolidation, and fraudulent conveyance. The Committee independently reviewed the Debtors' analyses and supporting materials and performed additional due diligence – confirming the Debtors' conclusion that the intercompany balances were of questionable enforceability and that avoiding massive litigation costs through settlement was in the best interest of the Debtors' estates and creditors. *See* Disclosure Statement at 34-36. This outcome was endorsed by all major unsecured creditor constituencies (with differing interests in the treatment of intercompany claims and other interdebtor disputes) and does not harm the JSNs, because the Plan provides them with full recovery, in cash, of all prepetition claims – a better result than they could get even by succeeding in enforcing all prepetition intercompany claims.

11. Contrary to the JSNs' assertions (Motion at 4), the Plan does not call for "intercompany claim litigation." Like most other classes of claims, intercompany claims are settled, not adjudicated, as part of the global settlement. If the Plan is not confirmed, it will have no impact on the treatment of the claims, and the JSNs will be free to propose the appropriate parties and methods for adjudicating them. The Plan contains standard disclaimers preserving all parties' rights in connection with the claims. *See, e.g.*, Plan §§ X.D, XI.C.[5]

[5] Indeed, the Plan, in this regard, mirrors an approach the JSNs describe as appropriate in their Motion: one in which "debtors have proposed a resolution in a plan of reorganization, attempted to describe the dispute neutrally and openly in a disclosure statement, and left it to affected creditors alone to ratify a plan settlement of inter-debtor disputes." Motion at 4-5. The JSNs' assertion that this avenue has not been employed here is mystifying.

D. The JSNs' Disqualification Motion

12. On June 26, 2013, the day that the Court approved the Debtors' entry into the Plan Support Agreement, counsel to the Ad Hoc Group sent a letter to Debtors' counsel asserting the existence of certain alleged "inter-Debtor conflicts of interest." Thereafter, at the Debtors' request, the Court convened a hearing to address the issues raised in the June 26 letter. At the hearing the Court advised counsel to the Ad Hoc Group that it would not allow the issue of conflicts to "fester" in the case, urging the JSNs, if they believed relief was necessary, to "go ahead and make your motion, and do it quickly." Transcript of Hearing at 37:3-11, *In re Residential Capital, LLC*, Case No. 12-12020 (MG) (Bankr. S.D.N.Y. Jul. 3, 2013). The JSNs subsequently filed the Motion on July 18, 2013.

13. While the Motion came over a year into these chapter 11 cases – and only after the global settlement was announced – the facts underlying the allegations in the Motion have been known by the JSNs for some time. Among other things:

- On September 24, 2012, the Committee filed its motion seeking authority to prosecute certain claims against the JSNs, in which it noted that the Debtors' valuation of the JSNs' collateral "does not include any value on account of the Debtors' intercompany claims" and that according to the Debtors "the intercompany claims are subject to recharacterization and will not be a source of recovery for the Junior Secured Noteholders." Dkt. No. 1546, n.5.

- On December 6, 2012, the Debtors filed their motion seeking appointment of the Mediator, in which they noted their intent to engage in plan negotiations with all key stakeholders concerning, among other things, "intercreditor and interdebtor issues" including "the treatment of intercompany claims under a plan" and "the allocation of proceeds from the sale of the Debtors' assets," as well as "the allocation of administrative claims among the Debtor entities." Dkt. No. 2357 ¶¶ 4-6, 22.

- On February 11, 2013, the Debtors filed their motion seeking appointment of the CRO, in which they noted that the CRO would "work with creditors to resolve interdebtor and intercreditor disputes, including the allocation of assets among the Debtors." Dkt. No. 2887 ¶ 3.

The JSNs have thus been aware for *months* of the Debtors' and Committee's intent to negotiate a resolution of intercompany claims, and their preliminary views on such issues, but never pursued a conflict claim before now.

OBJECTION

A. The Motion Should be Rejected As Untimely and Tactically Motivated

14. As noted above, rather than acting promptly to address any purported conflict concerns, the JSNs waited to bring their Disqualification Motion until after the Debtors, the Committee, AFI, and the Consenting Claimants representing nearly all major constituencies in these cases had spent five months negotiating and agreeing upon the terms of a consensual chapter 11 plan – all through a Court-supervised Mediation overseen by a sitting United States Bankruptcy Judge. It is apparent that the belated Motion was motivated not by any legitimate concerns over potential conflicts of interest, but by a desire to create maximum disruption, and gain maximum leverage, in these cases.

15. The Court should not, and need not, tolerate such behavior. As an initial matter, "[m]otions for the disqualification of attorneys are not generally viewed with favor by the courts because 'disqualification has an immediate adverse effect on the client by separating him from counsel of his choice [and because such] motions are often interposed for tactical reasons.'" *In re Levy*, 54 B.R. 805, 806 (Bankr. S.D.N.Y. 1985) (quoting *Bd. of Educ. of the City of N.Y. v. Nyquist*, 590 F.2d 1241, 1246 (2d Cir. 1979)). *See also In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 678 (Bankr. S.D.N.Y. 2006) ("Motions that would bring on intolerable consequences for an estate should not be used as a tactic to augment a particular constituency's recovery.").

16. In keeping with this principle, courts have not hesitated to deny motions of this sort, brought after undue and prejudicial delay and with the transparent goal of seeking a

litigation advantage. Judge Gonzalez's decision in *WorldCom* is instructive. *In re WorldCom, Inc.*, Case No. 02-13533 (Bankr. S.D.N.Y. May 28, 2003). There, following proposal of a chapter 11 plan, creditors of MCI Communications Corp., an affiliate of WorldCom, sought the appointment of a separate creditors' committee, arguing that issues concerning substantive consolidation and intercompany claims precluded the existing committee, which was supposedly controlled by creditors of other debtors, from representing the interests of holders of claims against MCI. Judge Gonzalez denied the motion in a lengthy bench decision on the ground, among others, that "the movants did not file their motion for a separate committee until after the plan negotiation process had concluded and the parties had reached consensus on the issue of substantive consolidation." Transcript of Hearing at 144:3-7, *In re WorldCom, Inc.* (Bankr. S.D.N.Y. May 28, 2003) (transcript and related order attached as **Exhibits A** and **B** hereto); *see also id.* at 151-53 (expanding on lack of timeliness).

17. In *O.P.M. Leasing*, Judge Lifland denied as untimely and tactically motivated a motion seeking to preclude, in part because of the existence of an intercompany claim, the same individual from serving as chapter 11 trustee for both a subsidiary and its corporate parent. *See Hassett v. McColley (In re O.P.M. Leasing Servs., Inc.)*, 16 B.R. 932, 937-38 (Bankr. S.D.N.Y. 1982). The court noted that "the U.S. Trustee's Report of Selection for Appointment as Trustee, the application of Hassett and the affidavit of his counsel were more than sufficient to put interested parties on notice of apparent or potential conflicts of interest," and that the "inference is inescapable that the motions have a tactical intendment and insipid regard for the genuineness of the conflict issue"[6]

[6] Similarly, in *Bradlees Stores*, Judge Lifland denied a motion for the appointment of an examiner to investigate intercompany claims where the debtors' professionals had already conducted an investigation of such claims and had concluded, in a lengthy report, that such claims might be subject to equitable subordination or

18. Here, as in each of these cases, the Court should reject the JSNs' rope-a-dope tactic of hanging back and surfacing with a belated disqualification motion tactically timed for maximum disruptive effect. *Adelphia*, the case on which the JSNs most heavily rely, showcases strikingly similar scorched earth litigation tactics. In *Adelphia*, the parties and the court agreed that the debtors should remain neutral because the central issues in the bankruptcy were the division of asset sale proceeds among separate operating debtors and intercompany accounting issues that had fostered actual litigation from the outset of the case. *See, e.g.*, 336 B.R. at 625 (noting "sharp dispute" among creditors of different debtors over early task of restating financial statements and finding debtors "approached the task with neutrality"). Accordingly, when disqualification of counsel was sought, the court recognized that "mandatory neutrality" would not prejudice creditors, other stakeholders, or the debtors, as the affected creditors were already poised to litigate the relevant issues themselves. *See id.* at 641. The court rejected the request for additional relief (*e.g.*, the appointment of independent fiduciaries) that *would* have disrupted the case – criticizing the tactic in the strongest terms. *See, e.g.*, *id.* at 618.[7] Even after the case was globally settled and the parties agreed, through a plan, to pay the

recharacterization, and the movants had waited until eight months after receipt of the debtors' report to bring their motion. *See In re Bradlees Stores, Inc.*, 209 B.R. 36, 38-39 (Bankr. S.D.N.Y. 1997) (right to examiner waived where movants had "allowed the entire thirteen-month investigation surrounding the Acquisition to be conducted by the Debtors' professionals, at significant cost to the estates, without seeking the appointment of an independent third party," and it was "simply inappropriate, at this late date, to take issue with the conclusions set forth in the [debtors' report] when the movants received the report eight months ago"). The court went on to note that it might at some point become necessary to appoint "an objective third party, such as a plan facilitator/mediator" to help resolve issues concerning the intercompany claims, *id.* at 40 – which, notably, is exactly what was done in these cases.

[7] In an admonition eerily applicable here, Judge Gerber recognized "the compelling inference that these motions were filed as part of a scorched earth litigation strategy that would provide the Arahova Debtors with little benefit that they do not already have (trumped, dramatically, by a resulting prejudice to the Arahova Debtors themselves, along with all of the other Debtors), and which would have the effect (and, the Court believes, the purpose) of imperiling the pending Time Warner/Comcast transaction and the Debtors' DIP financing in an effort to extract a greater distribution, sidestepping the Court-approved process for determining the Intercreditor Dispute issues on their respective merits." 336 B.R. at 618-19.

movants' professional fees as an estate expense, the court prohibited reimbursement, denouncing the disqualification motion as the "paradigmatic example of outrageous conduct in this case." *In re Adelphia Commc'ns Corp.*, 441 B.R. 6, 20 (Bankr. S.D.N.Y. 2010). The JSNs' similar conduct here warrants denial of the Motion, among other consequences.

B. The Motion is Foreclosed by the PSA Order

19. The relief sought in the Disqualification Motion is also foreclosed by two separate aspects of the Court's order (the "PSA Order") and opinion (the "PSA Opinion") approving the Debtors' motion (the "PSA Motion") for authority to enter into the PSA, which was entered over the objection of UMB Bank, N.A., the indenture trustee for the Notes.

20. First, in granting the PSA Motion, the Court found that "the relief requested in the Motion is in the best interests of the Debtors' estates" and that "each of the parties to the Agreement . . . have acted reasonably, in good faith, and in the best interests of their respective constituencies in entering into the Agreement." PSA Order at 1-2 [Dkt. No. 4098].[8] These findings were entered over the objection of UMB, which had requested that any findings concerning the Debtors be stricken and that the findings be limited to the RMBS Trustees. *See* Transcript of Hearing at 100-06, *In re Residential Capital, LLC*, Case No. 12-12020 (Bankr. S.D.N.Y. June 26, 2013). The Court having found that the Debtors and the Committee acted in good faith and in the best interests of their respective constituencies in entering into the Plan Support Agreement, the JSNs can hardly argue that the parties breached their fiduciary duties in negotiating the terms of that agreement.

[8] *See also* PSA Opinion at 44 [Dkt. No. 4102] ("The findings of fact that each of the parties, including the RMBS Trustees, have acted in good faith and in the best interests of its respective constituencies in entering into the PSA are appropriate now and supported by the record. The PSA resulted from nearly seven months of mediation addressing scores of issues.").

21. Second, the PSA Order authorized the Debtors to "enter into and perform under the Plan Support Agreement." PSA Order ¶ 2. The Plan Support Agreement, in turn, obligates the Debtors and the Committee to pursue confirmation of the Plan, *see generally* Plan Support Agreement § 3, and under the terms of the Plan Term Sheet, the Plan will release intercompany claims. *See* Supplemental Term Sheet at 2.[9] The Court's explicit authorization for the Debtors to "enter into and perform under the Plan Support Agreement" precludes the JSNs from now asking the Court to prevent the Debtors from doing precisely that by disabling their lead counsel and CRO.

C. The Motion Should be Denied Because There is No Conflict as All Debtors Support the Settlement

22. The Disqualification Motion ignores that the Debtors, the Committee, and the Consenting Claimants representing all major constituencies other than the JSNs have already entered into a comprehensive settlement of all claims, including the intercompany claims, and are aligned in support of the Plan. This settlement compensates the JSNs for any value they could have realized from the intercompany claims by providing them with payment in full. As a result of the settlement, there is no *current* conflict among the Debtors that could conceivably require disqualification of counsel. To the extent the Motion raises any cognizable conflict issues regarding the process *leading to* the settlement that are not otherwise precluded by the Court's approval of the PSA Motion, such issues should be heard, if at all, in the context of the confirmation hearing, along with any substantive Plan objections.

23. In contrast, *Adelphia* was in an entirely different posture when Judge Gerber ordered the debtors to "tee up the Interdebtor Disputes for Court determination" and "step

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[9] Copies of the Plan Support Agreement and Supplemental Term Sheet are attached to the PSA Motion [Dkt. No. 3814].

to the side while affected creditors [fight] the issues out." 336 B.R. at 671. At the time of the cited decision, the parties in interest were embarked on an elaborate multi-step litigation track to determine the allocation of asset sale proceeds among separate operating debtors and resolve hotly contested issues with respect to intercompany claims between the Adelphia parent company and its subsidiaries. *See id.* at 633-36. The global settlement here eliminates any similar need for recusal, if such a need ever existed in these cases.

D. <u>In Any Event, the Allegations of Conflict Are Completely Meritless</u>

24. Even if the Disqualification Motion were not barred for the reasons described above, the underlying alleged "conflict" is a fiction. As the JSNs concede, putative intercompany claims are a hallmark of sizeable multi-debtor bankruptcies. *See* Motion at 4; *Adelphia*, 336 B.R. at 617 ("In multi-debtor cases, individual debtors frequently, if not always, have actual or arguable obligations to each other…"). Accordingly, courts routinely permit dual legal representation absent a manifest conflict that threatens to harm the estates or creditors more than the cost and complication that would be caused by requiring separate counsel. *See In re Adelphia Commc'ns Corp.*, 342 B.R. 122, 128 (S.D.N.Y. 2006) ("[T]he presence of intercompany claims between debtors represented by the same counsel does not automatically warrant the disqualification of that counsel."). Here, the JSNs fail to identify *any* harm caused by alleged conflicts, much less harm severe enough to warrant the expense and inconvenience of requiring separate counsel for up to 51 separate Debtors.

i. The Debtors are Not Conflicted

25. The intercompany claims were settled as part of a global resolution that protected the rights of all parties. The treatment of intercompany claims in these cases was, from the start, secondary to the core issue that *united* all creditor constituencies: obtaining a more

appropriate plan contribution from AFI. However, the treatment of intercompany claims, among various other interdebtor and intercreditor issues, was recognized as a plan issue from the outset and included as a mediation issue without objection from the JSNs. The Debtors undertook an analysis demonstrating that the intercompany claims in these cases were subject to serious challenge and that resolving these claims could take years of expensive, self-defeating litigation. The Committee reviewed and validated these conclusions. In the ensuing mediation, all participating parties ultimately agreed that avoiding litigation of the intercompany claims through settlement provided substantial benefits for the estates and their respective creditors. Indeed, the allocation of the AFI Contribution was premised on the understanding that intercompany claims would not be enforced – the settling parties holding claims at each of the different Debtor groups factored that understanding into the allocation of value. If, instead, the Plan had proposed that intercompany claims would be litigated to conclusion, the allocation of value from the AFI Contribution would likely have been very different.

26. However, the JSNs were not injured by the agreement to waive intercompany claims. The settling parties compensated the JSNs for whatever value the claims could have had to them by providing a better recovery than the JSNs would receive if they defeated the AFI settlement and then litigated and won all intercompany claim disputes: payment in full, in cash, of their full prepetition claims. Obviously, the JSNs cannot have it both ways by accepting the benefit of the increased AFI payment while insisting on litigating claims that were waived as a condition of the settlement and its agreed allocation.

27. This type of agreement to avoid endless litigation by globally settling intercompany claims is hardly uncommon. For example, in *Charter*, Judge Peck approved such a plan despite the vocal objections of certain noteholders that argued, as the Ad Hoc Group does

here, that the treatment of intercompany claims, and in particular the debtors' voting of such claims in favor of the plan, violated the debtors' fiduciary duties. Overruling the noteholders' objections, Judge Peck held that the "decision by the Debtors' board of directors to vote in favor of the Plan without considering each Debtor's individual interests does not suffice to establish an *ultra vires* act," and concluded that the "Debtors' board of directors appropriately evaluated the Plan on a companywide basis rather than a debtor by debtor basis." *See JPMorgan Chase Bank, N.A. v. Charter Commc'ns Op., LLC (In re Charter Commc'ns)*, 419 B.R. 221, 270-271 (Bankr. S.D.N.Y. 2009) (citations omitted).

28. The lack of any harm flowing from the "conflict" stands in contrast to the severe damage to these cases that would result from the aggressive relief sought through the Motion. The JSNs cite no case in which a party was permitted to surface at this stage in the process and disarm its adversaries by objecting to a "conflict" that had been common knowledge for months. *Adelphia* is the only cited example of a large-scale bankruptcy in which comprehensive limits were placed on counsel with respect to intercompany disputes, but that mandate followed from a common recognition that interdebtor claims were the chief drivers of value distribution in the cases, and bondholder groups representing each of the key estates had thus already stepped to the fore to litigate the issues at the time Debtors' counsel was more formally sidelined. *See* above at ¶ 18. While conflicts counsel is sometimes appointed to prosecute a single intercompany claim, *see, e.g.*, *In re AbitibiBowater, Inc.*, Debtors' App. ¶¶ 9-10, Case No. 09-11296 (Bankr. D. Del.) (KJC) [Dkt. No. 2302], imposing such a mechanism here, where hundreds if not thousands of individual intercompany claims would have to be litigated, would create precisely the type of litigation meltdown that the parties and the Court have been seeking to avoid. Indeed, the JSNs themselves recently warned, in connection with

the extension of exclusivity, that absent prompt settlement and confirmation of a plan, the Debtors would become administratively insolvent before year end.[10]

29. In all of the other cases the JSNs cite to illustrate their requested relief, *see* Motion at 17, disqualification of existing counsel was *denied*. *See O.P.M. Leasing*, 16 B.R. at 941 (denying disqualification of counsel, along with motion to remove trustee); *Katz v. Kilsheimer*, 327 F.2d 633, 636 (2d Cir. 1964) (finding it "not at all clear" special counsel needed); *In re Global Marine, Inc.*, 108 B.R. 998, 1004 (Bankr. S.D. Tex. 1987) (noting movant's failure to show "any instance in which the dual representation has caused any injury to the estate" and denying disqualification); *In re Guy Apple Masonry Contractor, Inc.*, 45 B.R. 160, 166 (Bankr. D. Ariz. 1984) (finding conflicts of interest, but nevertheless denying disqualification). These cases cut *against* the Disqualification Motion.

30. Finally, the JSNs' reliance on *In re JMK Constr. Grp. Ltd.*, 441 B.R. 222 (Bankr. S.D.N.Y. 2010), *see* Motion at 13-15, in which the court declined to approve the appointment of common advisors to multiple debtors with claims against one another, only highlights the JSNs' failure to raise these issues at retention. Significantly, the *JMK* appointments were opposed by the U.S. Trustee and a judgment creditor whose claim was the "primary motivation" for filing the cases and the very basis of interdebtor liabilities. *Id.* at 226. While the JSNs disclaim "the wholesale disqualification of section 327(a) counsel," Motion ¶ 14, they make no effort to explain how conflicts concerns involving 51 Debtors – in contrast to the *four* debtors involved in *JMK* – could be resolved without appointing a massively burdensome array of separate professionals.

[10] *See* Declaration of Reid Snellenbarger in Support of Ad Hoc Group's Objection to Debtors' Motion for the Entry of an Order Further Extending Their Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof, dated April 29, 2013, at ¶¶ 6-20 [Dkt. No. 3597].

31. The JSNs largely fail to identify specific Debtors allegedly being disadvantaged by the purported conflicts. That is not surprising since this is really an inter-*creditor* dispute – pitting the JSNs, whose interests cut across multiple Debtors, against unsecured constituencies with claims throughout the capital structure. This stands in contrast to *Adelphia*, in which specific disputes were joined between different operating debtors.

32. The JSNs identify only a single specific Debtor supposedly injured by the purported conflict: Homecomings Financial, LLC, which holds a potential claim against RFC. *See* Motion ¶ 25. But this cherry-picked example is unavailing for several reasons. *First*, no discrete interdebtor or intercreditor issue should be considered in isolation – and certainly not outside the confirmation process through which such plan issues can be comprehensively assessed. *Second*, this very claim would have been disallowed under the JSN PSA, as the purported debtor and creditor both sit within the "RFC Group," within which intercompany claims were to be expunged without condition. *See* above at ¶ 3. *Third*, the Homecomings claim highlights the risk of substantive consolidation, particularly consolidation within the RFC group, which is avoided by the global settlement and the Plan. Substantive consolidation would become a real possibility in these cases if the estates and their creditors were forced to fully litigate the panoply of complicated intercompany issues.[11] By the JSNs' logic, with the global settlement and Plan rejected, a separate fiduciary would have to be appointed to litigate all issues potentially affecting this claim against separate estate fiduciaries for each of the other RFC debtors,

[11] Additionally, while beyond the scope of this Motion, the Homecomings claim is vulnerable to substantial challenges in its own right. Among other things, it is held by a shell entity that has been dormant for years, is not evidenced by a note, has no schedule or history of repayment, and was on a list to be released by the Debtors prior to the petition date. *See* Disclosure Statement Exh. 5.

multiplying delay and expense and almost guaranteeing administrative insolvency. This cannot be a productive course for any constituency.

ii. The Committee is Not Conflicted

33. The JSNs' arguments in favor of disqualification of the Committee – buried in three short paragraphs at the end of the Disqualification Motion – are completely baseless. As an initial matter, the JSNs, which claim to be fully secured and have disavowed membership in the Committee's constituency, have no standing to complain of alleged conflicts in the Committee's representation of unsecured creditors.[12] Not a single unsecured creditor has objected to the Committee's role in the Mediation or Plan process, and, indeed, most of the Committee's constituencies participated actively in the negotiation and formulation of the Plan.

34. Even if the JSNs were a proper party to raise conflict concerns, they allege no conflict here. Official committees, as the JSNs themselves have pointed out, represent creditors, not debtors. *See* Transcript of Hearing at 48:6-7 *In re Residential Capital, LLC*, Case No. 12-12020 (Bankr. S.D.N.Y. Mar. 5, 2013) (counsel to JSNs noting that committee members "are not fiduciaries to the estate" but rather "are fiduciaries to the unsecured creditors"); *see also, e.g.*, *In re Barney's, Inc.*, 197 B.R. 431, 442 (Bankr. S.D.N.Y. 1996) ("A creditors' committee and its members owe no duty to the debtor or its estate."). Conflicts among debtors, therefore, are relevant only to the extent they implicate a committee's duties to its constituents, *i.e.*, the unsecured creditors.

35. Here, the JSNs identify no conflicts affecting unsecured creditors, and there are none. The Committee, representing the unsecured creditor body, has determined that

[12] In their statement regarding the appointment of the CRO, the JSNs wrote that the Committee "has limited fiduciary duties that do not run to all stakeholders and certainly do not run to the Junior Secured Notes." Dkt. No. 3087, at 4.

the treatment of intercompany claims in the proposed Plan is reasonable and appropriate. To properly make that determination, the Committee need not find that the settlement is beneficial to each and every individual creditor – it need only determine that it benefits its constituents as a whole. *See, e.g., In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 717, 722 (Bankr. S.D.N.Y. 1992) (committee's fiduciary duty "extends to the class as a whole, not to its individual members").[13] Thus, even if the JSNs had identified an unsecured creditor who objects to, or would be harmed by, the settlement of intercompany claims proposed in the Plan – and they have not – that would not prevent the Committee from pursuing confirmation of the Plan.

36. *Enron* is closely on point. There, Judge Gonzalez denied a motion to appoint a separate creditors' committee consisting of creditors of certain debtor subsidiaries. *See In re Enron Corp.*, 279 B.R. 671 (Bankr. S.D.N.Y. 2002). The movants appealed, arguing, as they had below, that the "diametrically opposed" interests of two "classes" of creditors in the case led to an "inherent conflict" and made it impossible for a single committee to represent the interests of both groups "with the loyalty and vigilance required [by the law of fiduciary duties]." *Mirant Americas Energy Marketing, L.P. v. Off. Comm. of Unsecured Creds. of Enron Corp.*, No. 02-cv-6274, 2003 WL 22327118, *4 (S.D.N.Y. Oct. 10, 2003). Despite movants' assertions that the conflict was more than a "routine squabble" among creditors, *id.*, the district court affirmed, noting that "creditors will necessarily have varying and frequently conflicting interests," and that "conflicts of interest, even among different 'classes', neither implicate the committee's fiduciary duties nor inevitably necessitate additional committees." *Id.* at *6-8.

[13] *See also In re Levy*, 54 B.R. 805, 807 (Bankr. S.D.N.Y. 1985) ("Counsel for the creditors' committee do not represent any individual creditor's interest in this case; they were retained to represent the entire unsecured creditor class."); *ABF Capital Mgmt. v. Kidder Peabody & Co. (In re Granite Partners, L.P.)*, 210 B.R. 508, 516 (Bankr. S.D.N.Y. 1997) ("The committee and its members owe a fiduciary duty to the class of creditors that the committee represents (i.e., its constituency). . . . They do not, however, owe a fiduciary duty to any particular creditor . . . or any other party, including the estate.") (citations omitted).

37. The same principles apply here, and the JSNs cite no authority compelling a different result. The JSNs cite only to a single footnote in *Adelphia* in which the court noted that it had "expressed the view," in a chambers conference, that the committee in that case should remain neutral on intercreditor disputes. *See Adelphia*, 336 B.R. at 627 n.18 (cited at ¶ 28 of the Disqualification Motion). Leaving aside whether such a passing observation could qualify as a holding, the facts in *Adelphia* were starkly different than here, as discussed above at ¶¶ 18, 23. Moreover, unlike the Committee here, the committee in *Adelphia* was hopelessly split, with committee members holding, and vocally asserting, violently opposing views as to the merits of intercreditor and interdebtor disputes. *See, e.g.*, *Adelphia*, 336 B.R. at 618 n.4, 631-32 (describing opposing interests) The opposite is true here, where the membership of the Committee – and, indeed, all major unsecured creditors – are united in supporting the Plan.

38. The JSNs' remaining contentions regarding the Committee, premised on the mistaken view that the Committee seeks to act "for, or on behalf of" the estates, Disqualification Motion ¶ 27, are likewise misplaced. The Committee, in seeking confirmation of the Plan and its settlement of intercompany claims, will be advocating solely its own interests and those of its constituents. It has not sought standing to prosecute or settle the intercompany claims and has no intention to speak for the Debtors in connection with Plan confirmation.[14] Moreover, contrary to the JSNs' suggestion, *id.*, there is no requirement that the Committee seek Court approval before assessing or taking positions with respect to intercompany claims on behalf of unsecured creditors as a whole. Such analyses are part of a Committee's core duties under section 1103(c) of the Bankruptcy Code.

[14] For this reason, the JSNs' citation (at ¶ 27) to comments made by the Court at the May 7, 2013 hearing in connection with the Committee's motion for standing to bring claims against *AFI* are irrelevant.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court deny the Disqualification Motion and grant such other relief as the Court deems just and proper.

Dated: New York, New York
July 26, 2013

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EXHIBIT A

#6418

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

\- x

In the Matter

of

WORLDCOM INC., et al

Debtor.

Case No. 02-B-13533

\- x

May 28, 2003

United States Custom House
One Bowling Green
New York, New York 10004

Motion filed by HSBC Bank USA for an order directing the appointment of an Official Committee of Creditors for MCI Communications and its subsidiaries. Joinder of Aerotel Ltd. to above motion. Objection of the UST filed to above motion. Joinder of Wilmington Trust Company to motion. Objection filed by the Debtor's to the above motion.

B E F O R E:

HON. ARTHUR J. GONZALEZ,
Bankruptcy Judge

FILED
U.S. BANKRUPTCY COURT
2003 JUN -3 P 1:02
S.D. OF N.Y.

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P R O C E E D I N G S

(Exhibits 1 through 7 premarked for identification.)

THE COURT: We have made some changes with respect to the speaker system because there was a problem earlier picking up the sound, so if anyone is going to make their presentation, et cetera, we will make it from the podium if you want to take a few seconds to go over to the podium to do so.

Go ahead. Let me hear from.

MS. MOSS: Good afternoon, your Honor. Tina Moss of Pryor Cashman, Sherman and Flynn on behalf of HSBC Bank, USA as indenture trustee.

Your Honor, HSBC appears before the Court today on its motion in its capacity as indenture trustee to appoint a separate committee of creditors for MCI Communications Corp. and its debtors' subsidiaries.

HSBC is the successor indenture trustee for the approximately $773 million in aggregate principal amount of subordinated

debentures issued by MCI Communications Corporation.

In support of its motion, HSBC relies upon the evidentiary record before the Court on the two motions recently heard on May 15th to appoint a trustee, as well as on the additional evidence submitted by my affidavit filed in support of this motion.

Your Honor, I trust that you've received my affidavit as well as our memorandum of law which were filed with the Court on Friday?

THE COURT: Yes, I do. I have both.

MS. MOSS: The evidence put before the Court in connection with the motions to appoint a trustee includes a set of documents that were submitted by stipulated list of the exhibits for the hearing, which I believe the Court has, or should have, contained in a set of several binders that were submitted on those motions, your Honor.

Just to be clear, there was a stipulated set of exhibits that were submitted

on the trustee motions that were provided to the Court --

THE COURT: All right.

MS. MOSS: Binders, as well as a number of depositions testimony and the complete copies of the depositions I believe were submitted to the court as well.

THE COURT: Yes, they were.

MS. MOSS: This Court is familiar with the legal authorities regarding the appointment of a separate committee in a bankruptcy case, and this issue has been thoroughly briefed by all the parties, so I'm not going to discuss all the details of the case law that's described in our brief, and we will rely upon our brief in connection with the finer points of some of the cases, but to highlight the overarching legal standards under Section 1102 I would like to at least draw the Court's attention to the adequacy of representation determination that the Court is called upon to make.

Most importantly, this is a factual determination that is to be made on a

case-by-case basis and, in our view, the facts in this case present a compelling set of circumstances for the appointment of a separate MCI committee.

As your Honor is aware, the size and the complexity of this case simply cannot be overstated. This is the largest bankruptcy case ever filed and it was a case that was precipitated with allegations of fraud of tremendous magnitude.

That initially is one factor that the Court should consider in making its determination of adequacy of representation of the current committee structure.

THE COURT: When did you realize the current committee structure did not adequately represent the interest that you represent today?

MS. MOSS: Your Honor, HSBC was appointed successor and indenture trustee on January 23rd.

THE COURT: What about the prior entity? Did they raise issues with respect to the adequacy? I mean, you take the role as

indenture trustee that's left to you from the prior indenture trustee.

When did the indentured trustee, when in the name of your client or predecessor indenture trustee come to realize that the representation on the Creditors' Committee was not adequate in their view?

MS. MOSS: Your Honor, I can't speak for the prior indenture trustee on that issue. I believe that Wilmington Trust Company is represented here today by counsel and has joined in this motion and, to the extent that it can respond to that question, I would defer to Wilmington.

I can discuss the knowledge of HSBC post January 23rd and its involvement in the case, but prior to that time, I couldn't comment on what Wilmington knew or what its view was at that point.

THE COURT: Can you comment, did Wilmington take any steps to bring to the Court's attention or the U.S. Trustee's attention anything along the line that the representation on the Committee was not

adequate? Are you aware of any pleadings filed?

MS. MOSS: I'm aware of none, your Honor.

THE COURT: All right.

MS. MOSS: Your Honor, the plan in this case calls for substantive consolidation of the debtors which include a number of MCI, what I will describe as MCI entities with a number of World Com entities, and I think the Court is somewhat familiar with the corporate structure as it has been put before the Court in the context of the trustee's motion.

Going forward I would refer to the MCI's Communications Corporation and its subsidiaries as the MCI debtors and World Com Incorporated and its subsidiaries, its other subsidiaries as the World Com debtors.

The Court has set a confirmation hearing in this case for the week of August 25th, during which it is going to consider the issues of substantive consolidation.

The debtor's entire plan rests upon substantive consolidation and brand win that

rest upon the validity and enforceability of billion of dollars of intercompany claims allegedly owed by the MCI debtors to the World Com debtors.

Your Honor, a lot of argument and testimony was given or presented to the Court in connection with the trustee's motions on the issue of these intercompany claims and, in fact, again, I believe in connection with the adequacy of the disclosure statement that the Court recently heard as well.

I don't intend to restate or reiterate a lot of the same issues that were brought before the Court.

I believe that as far as the trustee's motion are concerned that a lot of information regarding what was done and what was not done with respect to an analysis of the intercompany claims is before the Court on that evidentiary record.

It would suffice it to say at this point the investigation of the validity and enforceability of those intercompany claims is crucial to the outcome of this case.

What we learned from the presentations that were made to the Court on the trustee's motion is that the professionals who are retained by both the debtor and the Committee, the accounting professionals, I should say, did not, and that includes FTI Consulting, Lazard Freres, Houlihan and Lokey, and Alex Partners did not set out to and did not, in fact, review or analyze the validity or enforceability of these insider claims in the context of this bankruptcy proceeding.

THE COURT: Let me take you back though to the adequacy of representation.

Would I be correct in stating that your position about the adequacy of representation really doesn't arise or didn't arise until you saw the plan?

Prior to that, there seems to be, in my understanding, no record of any reaction to the Creditors' Committee and the members of the Creditors' Committee with respect to adequacy of representation, but when you question the structure of the Committee and the motion for the appointment of a trustee, it really is

focused on when a plan came out it appeared to your client, I think, and other some MCI creditors, that their interest really weren't taken to heart as evidenced by the plan.

MS. MOSS: I think that's a generally fair summary of what occurred, but I would say slightly earlier on when HSBC requested appointment to the Committee, it recognized that there was, it believed or understood, that there was not a holder of the subordinated debenture, a significant holder sitting on the committee and for that reason requested appointment and also made efforts to engage in the negotiation process with the debtor and others.

I had, although honestly I've not set out all of these details in my papers, I think counsel would agree that I did have a number of conversations with counsel for the debtor, counsel for the Committee, counsel for the MCI ad hoc committee regarding the case and our efforts to become or to inject ourselves into the process, and I believe that, also, what was occurring to some extent was

telegraphed by Mr. Rosner's letter to the U.S. Trustee back in February where he said that the senior MCI bond holders sitting on the official committee were not representative of the junior MCI bond holders as between senior and junior issues.

I think he drew that clarification for the U.S. Trustee and in some way I think that that may have telegraphed what their view was of their role, and we continued our efforts then to engage with any parties who would speak to us and to continue our request and renew our request to the U.S. Trustee again at the end of plan to be placed on the committee, and all of that occurred prior to the filing of the plan.

MS. CHUNG: Your Honor, if I may.

THE COURT: No. You will have your opportunity.

MR. CHUNG: Yes, your Honor.

THE COURT: Let me come back to the statement you just made.

You are saying in a letter from Mr. Rosner, which I presume is Exhibit C, February 11, 2003, what do you believe was

stated in that letter?

MS. MOSS: If I may have a moment to turn to the letter myself, your Honor.

Your Honor, if you look at page 3 of the letter, the paragraph that begins at the top "As is usually the case."

THE COURT: That's basically the facts. That's page 2 of the letter.

MS. MOSS: I'm sorry. That's right.

Mr. Rosner states, "As is usually the case between senior and junior debt holders, on some interests the interest of the senior and junior notes will be aligned but on many they will not.

On those in which they differ, the MCI noteholders committee represents the senior interests and those members on the World Com committee are representative of these senior interests."

And I believe in that sentence he's referring to those members of the MCI noteholder committees who sit on the World Com official committee, and there are three, and then he goes on to say, "So the MCI junior

notes lack representation on the World Com committees as to these matters. To be clear, the three MCI members of the World Com committee are representative of the MCI junior notes on, for example, MCI versus World Com issues but are not on MCI senior versus MCI junior issues."

He then goes on to say that, of course, they recognize their fiduciary obligations for all creditors but in terms of representative members the MCI junior notes have none.

THE COURT: So would it be fair to say that your argument is that there was a breach of fiduciary duty by either committee with respect to the MCI junior noteholders?

MS. MOSS: Your Honor, we are not alleging a breach of duties on the part of anyone at this juncture.

THE COURT: Although you are not alleging it, it seems to me that these parties have a fiduciary obligation to all creditors and you're saying in various ways in all the papers that are filed and the papers for the

trustee, et cetera, that the MCI junior noteholders somehow were ignored and their interests were not taken into consideration.

How other than through some accident, negligence, I mean, how else are you not arguing that there is a breach of fiduciary duties? Because you do have a recognition in this letter at least that the official committee is charged with acting as fiduciary for all clerks.

MS. MOSS: That's correct, your Honor. I don't think that this Court needs to determine on this motion whether there has been a breach of fiduciary duty by any committee member and we don't urge the Court to do so at this point.

In order for the Court to make a determination as to whether there should be an appointment of a separate committee, it need only to look to whether the representation is adequate and making that determination I don't believe subsumes a finding of breach of fiduciary duty.

THE COURT: I don't think it does.

But most cases you see with adequacy you don't have a plan already filed. You don't have a situation where this issue only has arisen before the Court in any formal manner before anyone after a plan is done and someone looks at it and says, "Wait a minute, our interests weren't taken into consideration."

MS. MOSS: Well, it is through discovery, in fact, your Honor, post filing of the plan that we learned, and I can point the Court to the various deposition testimony that's relevant through Mr. Savage and also through Mr. Capellas, that at no time during the negotiation process did anyone, any committee member or anyone for that matter, including the debtor, take the position that there should be a distribution to the MCI subordinated noteholders.

THE COURT: This is what I want you to come back to, this whole concept of fiduciary duty.

Once the Committee in its negotiation, once there is 100 cents on the dollar going to the senior and they negotiated

for that, that's apparently a consensual resolution. By contractual subordination, the juniors are going to have to pay the seniors anyway.

MS. MOSS: It is because it is a settlement though, your Honor, that the contractual subordination issue doesn't apply in the same respect.

THE COURT: It may not. I don't think you focus on the point I'm trying to raise is that once there was a negotiation for less than 100 cents on the dollar, to the extent the juniors interests were not taken into consideration, it happens right there because once that happens and the seniors are getting less than 100 cents on the dollar, I agree with you, you could have a settlement that would incorporate anything in terms of juniors getting something while seniors aren't paid in full. I understand that.

MS. MOSS: Right.

THE COURT: But, nonetheless, the seniors were looking at and still had fiduciary duties to all creditors.

MS. MOSS: I understand that they do, your Honor. I guess my point is that I don't think it is our burden on this motion to prove or to attempt to prove that there was a breach of fiduciary duty. I don't think the Court needs to get there.

I think there are a lot of issues of conflicting interests on the part of some of the committee members, like those I described and, also, like with the trade, the two MCI trade members that were brought to the Court's attention on the trustee's motion.

But I don't think we have that burden in connection with this motion and we aren't urging the Court to make that sort of a finding in connection with this motion.

We think that there is ample evidence that the adequacy of the representation with the structure of the Committee the way it was without the subordinated debenture holders were entitled to a meaningful voice in the process.

To the extent that their voice was not heard through other members of the

Committee, whether that is or isn't their obligation to negotiate for a separate recovery for a subordinated group of creditors when they have agreed to accept less than 100 percent, I'm not asking the Court to draw that conclusion at this point.

I think, like I said, there is ample evidence that the representation simply was not there and the mind set of the various committee members and their conflicting interest I think are enough to warrant the appointment of a committee without a direct finding of any breach.

Should I just proceed?

THE COURT: Go ahead.

MS. MOSS: Your Honor, getting back to the issue of the intercompany claims, I would refer the Court to the deposition of Mr. D'Amico, in the deposition transcript of Mr. D'Amico in pages 64 to 67 as well as the deposition of Mr. Savage at page 231 to 235 and the deposition of Mr. Capellas, at pages 99 through 101 regarding what was or wasn't done, and this was all evidence that was highlighted

for the Court in connection with the trustee motion, what was or wasn't done with respect to the intercompany claims.

Essentially, the debtor has asserted that its counsel is the only professional that has investigated the validity of these claims but the debtor has also asserted the attorney/client privilege in connection with the results of that investigation. However, the same law firm has represented both the World Com and the MCI debtors in connection with that investigation or there has been no separate counsel and there is no separate board of directors for the MCI debtors.

The Committee by its own admission or the admission of its accounting professionals has not set out the enforceability and the legal validity of the intercompany claims but its inquiry was limited by its attempt to identify claims and its intercompany matrix with respect to its balances.

Your Honor, that's indicated in the committee's brief in opposition to this motion

on pages 14 to 15.

The Committee confirms that it did not. It lists what it did in this case and what it was charged with doing and I don't see anywhere a description of an investigation into the legal validity and enforceability of these intercompany claims.

Your Honor, we don't find this necessarily surprising since the Committee was dominated by World Com and Intermedia creditors and these claims are the entire basis for their leverage against the MCI debtors.

These claims are highly suspect and they are subject to rigorous scrutiny under Supreme Court precedent that we are all familiar with, starting with the United States Supreme Court's opinion in Pepper versus Litton in 1939.

A shareholder, World Com in this case, has the burden of demonstrating good faith of these transactions and also to show the inherit fairness of them from the viewpoint of MCI and its creditors.

The question is who will take MCI's

position at the confirmation hearing with respect to these intercompany claims. There is no board of directors there. There is no separate counsel. There is no separate committee. This questions remains unanswered.

We submit that this burden should not fall on ad hoc groups of creditors and/or the indenture trustees as suggested by the debtor and the Committee.

Certainly MCI as a thriving company is entitled to its own estate funded fiduciary to test these claims.

Only this will level the playing field so that these intercompany claims could be properly tested on MCI on its own behalf and on behalf of its creditors.

Your Honor, I would like to discuss our view of the structure of the Committee and why we believe, and we have touched on some of this already, why we believe as currently structured it is inadequate to represent the interests of not just the subordinated holders but MCI creditors as a whole.

Eight of the 14 members of the

Creditors' Committee, a 60 percent majority, are either World Com or Intermedia debt holders, yet according to the committee on professionals of the 12 billion enterprise value assigned to these debtors, the value of MCI is approximately 90 percent of that.

All the other debtors combine make up the other 10 percent. This information was adduced at the hearing on the trustee's motion and it was consistent with the testimony of Mr. Fragen at page 119 and of Mr. Capellas at page 111.

The interest of the MCI creditors have been completely overshadowed by the interest of World Com and Intermedia creditors who hold large debt claims against entities with a disproportionately small value.

And, your Honor, as for the three, as I mentioned previously, as for the three MCI members of the Committee, the senior noteholders, there is but one who holds any subordinated debentures at all and this amount pails in comparison to the creditors senior debt claim.

You Honor, I indicated in my papers I may submit to the Court information regarding the holdings of the various committee members. I don't believe it is necessary. I think the Court has in front of it enough information to determine what the various interests of the Committee members are without specific information as to their holdings.

So I won't offer that to the Court at this time unless for any reason the Court feels that that would be necessary, and under those circumstances I would ask for the Court's guidance in how to go about doing that.

THE COURT: All right.

MS. MOSS: I think Mr. Rosner's letter, which we discussed earlier, supports this proposition and as for the two MCI trade creditors, AOL and EDS, they have complex contractual relationship with the debtors and they have negotiations ongoing with these relationships with the debtor and this is evident by the proof of claim they filed and the various settlement agreement --

THE COURT: What does that mean?

You redirected me towards adequacy of representation and then I questioned about breaches of fiduciary duty. I mean, I'm not quite clear.

Are you talking about adequacy of representation?

MS. MOSS: Yes.

THE COURT: And so you are saying that the MCI trade creditor.

MS. MOSS: Your Honor, this goes to the ability of a committee to function and which is really one of the considerations that a court may take into account in reaching a determination as to when there is adequate representation.

It entails an inquiry into the existence of any adverse or conflicting interests of committee members who are in agreement with the plan.

I don't think that to say someone may have other interests or conflicting views is to say that they have breached a fiduciary duty. I don't think that one necessarily leads to the other conclusion.

I think that the point is to the extent that they have interests in this case of their decision making process, you can't always separate one side of your brain from the other.

Their decision making process is going to be colored by their own relationship with the debtor and to pretend that we can all divorce ourselves from those interests is really, it is a fiction, and I think it happens in every bankruptcy case with respect to certain -- there are times of certain conflicting interests, but that's why a committee is supposed to be representative of the various creditor constituencies. This committee was not.

THE COURT: But is it representative of the trade creditors or are you saying it is only representative of the trade creditors who want to continue to do business with the debtor?

MS. MOSS: Well, it is true that there are no trade creditors on the committee that I'm aware of on the MCI side who do not

want to do business with the debtor.

So, to the extent that there are none from that group, I would have to say the Committee doesn't include all of the various constituencies from a trade creditors perspective.

But those arguments were made to the Court by Mr. Weisfelner in connection with the trustee's motion. I'm not attempting to restate those at this point.

Only to point out to the Court that although there may be several creditors on the committee, a minority, however, of MCI creditors, that there are various interests that they have that are not necessarily representative of the, certainly not of the subordinated debenture holders, your Honor, who we represent.

THE COURT: To a certain extent, if the trade creditors on the committee had no other interests other than business, even if they weren't going to continue business with the debtor, how does that help the junior note holders in the context of representation? The

junior noteholders have an entirely different position.

MS. MOSS: That's true, your Honor. I'm not suggesting it does. I'm not suggesting the Court replace trade creditors evidenced on one side with another.

I'm saying if you look at the composition of the commission as a whole and you look at the MCI side and scrutinize who was on the committee, clearly the subordinated, the specific interests of the subordinated holders are not represented as a constituency by this group of creditors.

THE COURT: All right.

MS. MOSS: And as a result of the structure it's apparent there is a whole conceded value of MCI debtors otherwise solvent set to the World Com debtors who were seriously insolvent but for these alleged intercompany claims, and the plan that is proposed represents a settlement with the holder of the senior debt claims which completely circumvents holders of the subordinated debentures, and we have a committee that seems to be refusing to

challenge the billions of dollars of insider claims of shareholders against MCI. I think that in itself speaks to the issues.

There is no one other than these ad hoc group of creditors who has sought to take a position, at least not yet at this juncture, in opposition to these billions of dollars of intercompany claims.

The decision of David Matland to drive the negotiation process at the request of Mr. Capellas, and Mr. Capellas testified to that at his deposition on pages 43 to 47, only intensified the imbalance of power in this case.

Mr. Matland's leading role in plan negotiations, which is highlighted by the drafting of, his counsel's drafting of the plan term sheet, which was submitted to the Court as Exhibit U to Mr. Pole's affidavit in connection with the trustee's motion highlights the intensity of Mr. Matland's involvement in this process.

Mr. Matland is not a member of the committee with fiduciary responsibilities to

all creditors but he represents the interest associated with his groups holdings, which are World Com and not MCI interests.

Here he acted with the imprimatur of the debtors which gave added weight to his negotiation position.

Your Honor, a brief contains a detailed discussion of the fact of the denial of HSBC's appointment to the Committee at pages 3 to 9.

I would highlight for the Court as I've said previously that there is no significant holder of the MCI subordinated debentures on the Committee.

The U.S. Trustee's denial of appointment of HSBC as indentured trustee to the Committee, although it was made not until May 9th, only underscores the fact that its creditors constituency was excluded from participation and the MCI senior holders made it clear in Mr. Rosner's letter as to their views on their representation of subordinated holders with respect to senior and junior issues, senior versus junior issues I should

say.

The denial of appointment of HSBC by the U.S. Trustee was based in part, and we included the U.S. Trustee letter to me explaining the basis for her decision in my affidavit.

I don't know, your Honor, if you've had an opportunity to review it, but --

THE COURT: Exhibit E?

MS. MOSS: Exhibit E.

THE COURT: Go ahead.

MS. MOSS: -- that decision was based in part on an erroneous characterization of HSBC's role as indenture trustee by the Creditors' Committee, and in its letter, which Miss Tom attached in her May 9th letter to me, she attached a letter from Ira Dizengoff from Akin Gump, counsel to the Committee, that was dated March 3, 2003.

That letter implies, if it doesn't even state directly, that the MCI subordinated debenture holders had an equity interest and not a claim based on a debt.

The Committee did not provide HSBC

with a copy of its letter to the U.S. Trustee back in March and the U.S. Trustee did not request HSBC to respond to that letter. This motion was filed on April 30th.

It wasn't until May 9th that I received a response from the U.S. Trustee to our request for appointment to the Committee that was made back in February and renewed again back in March, and that response included Mr. Dizengoff's letter of March 3rd.

That was the first time I had ever seen it and, therefore, had no opportunity to respond to a lot of the inaccuracies that were in it, both with respect to HSBC's role because Mr. Dizengoff erroneously stated he believed, he believed HSBC was both indenture trustee and property trustee and that was not, in fact, true and to this day is not true and, also, the mischaracterization of the claim by the debenture holders that HSBC represents.

To the extent that the U.S. Trustee believed in making her decision that this is an equity claim or equity interest and not a debt claim, I mean, that's just flat out wrong.

So, to the extent that that was part of the determination, it clearly excluded HSBC as indenture trustee on a basis that was improper.

Further, your Honor, we were not included in any of the planned negotiations, any of the various meetings that occurred that also included noncommittee members.

Information was widely shared with members of the MCI ad hoc committees, Intermedia ad hoc committee, I guess the World Com add hoc committee and members of those committees I believe were involved and participated in planned negotiations.

The debtor was aware of HSBC's role as successor and indenture trustee back on January 23rd because the debtor is a party to a tri-party agreement that appointed HSBC as successor.

I made direct contact with debtors counsel, both by phone and by letter, in an attempt to open up the channels of communication; however, we were not included in any of the negotiations and there was no

participant in the negotiations on the account of the debentures. No significant holder that participated.

And, again, your Honor as we've seen from the testimony of Mr. Savage and Capellas, no committee member ever took a position with that debt that there should be a distribution on the account of claims of the unsubordinated debenture holders, rather the debtor insisted on the committee members undivided support on the plan and the members apparently agreed, notwithstanding any other claims that they may hold.

And this goes back to the testimony of Mr. Savage that was highlighted for the Court with respect to the support agreement or the concerns regarding potential lock up of votes with respect to the plan, and that would direct the Court's attention back to Mr. Savage's deposition at pages 244 to 45 and 275 to 276, and 278 to 279 and also Exhibit D to Mr. Paul's affidavit showing a draft support agreement that was proposed.

Your Honor, we believe that all this

evidence taken together warrants the separate committee of MCI creditors under Section 1102.

The discretionary factors to be considered by the Court in making this determination don't alter this analysis.

Your Honor, there are certain considerations that the Court may also make with respect to determination of adequacy of representation and, for example, the issue of costs, which I'm sure will be raised and has been raised by the objectors to the motion.

The potential and the cost of another committee is not a sufficient reason to deprive creditors of adequate representation on additional events and we have cited cases in our brief for that proposition.

The costs of adding a committee of MCI creditors in this case pails in comparison to the size of the debtors businesses and the overall cost in administration of these bankruptcy cases, not to mention the fact that to the extent confirmation proceedings is defeated going forward, the costs associated with that or with a potential appeal and all

the various discovery that is going to take place between now and that time.

As far as timeliness goes, your Honor, it is our view that the objectant should not be able to necessary as a word in opposition to this motion.

The interests of those represented by HSBC's indenture trustee were excluded from the planned negotiation process despite their efforts to be included, and to the extent that the filing of the plan brought to light the circumstances, although possibly foreshadowed by some of the events that occurred prior to that, should not work as a detriment in making a determination with respect to this motion on HSBC's part.

Certainly the addition of a committee has no complexity to this case that the courts and the parties who are sophisticated in this matter cannot manage.

And as long as the Committee maintains its current structure, our view is that there is no meaningful avenue for participation by an advocate and a fiduciary

who is solely beholden to the interests of the MCI creditors.

THE COURT: I want to go back to something. I mean, I'm a little confused.

I think with the adequacy of representation I think your case stems from depositions that the junior noteholders, and you have a couple of them in Mr. Rosner's letter, did not have a representative on the committee; and, to the extent somebody may have held some junior notes, they really acted for the interest of the larger holdings they may have had, whether they be World Com or the senior notes; is that correct?

MS. MOSS: That's not all of it. It is also the fact that the Committee was dominated by a majority of World Com and Intermedia holders as well.

THE COURT: That may be. Let's just deal with adequacy of representation.

You can't be arguing because MCI didn't have a majority on the committee that MCI was not adequately represented?

You have honed in on one part, and

that is the juniors, and then you switched to what I talked about earlier, an issue of fiduciary obligation because now you are in a situation with saying I want an MCI committee because MCI's interests as evidenced by the trade creditors that are interested in continued business, the noteholders who may have named MCI, in fact, were driven to a great extent by other holdings, whether they be Intermedia or World Com and the seniors who were in the committee basically took care of themselves.

So we now have a request for a committee, for an MCI committee when it really is only one interest that arguably can make its case that it wasn't adequately represented.

The other interests are there and what we are left with is an argument that those interests were present but the holders of those interests didn't fulfill their obligations as committee members because how else could you end up where we are, either you are adequately represented or you are not.

And you said there was no one on

there from the juniors alone, and, certainly, it would have held junior notes, wasn't interested in recovery from the juniors.

MS. MOSS: I'm not sure I said that we are not adequately represented solely for that reason.

I'm saying that the composition of the Committee as a whole included a majority of nonMCI creditors when the majority of the assets of the company, the overwhelming majority, in fact over 90 percent of the value of this company which is now supposed to be substantively consolidated with a serious insolvent set of debtors was dominated by nonMCI creditors. That's the starting point.

THE COURT: And that starting point goes back to approximately a week or two weeks after the case was filed. A week or two weeks after the case was filed the Creditors' Committee was formed and the structure of that committee and the structure of the alleged debt as to be distributed among debtors' entities can be ruled out where the asset base lies or the asset value lies is no different today than

it is then.

MS. MOSS: That may be, your Honor, but who knew when the case started that there was going to be a determination by the debtors or at least a presumption by the debtors that billions of dollars of intercompany claims were going to be treated as valid and that the debtors should be substantively consolidated.

And, in fact, I think the Enron decision is instructive on this point, that is, in the Enron case the Court determined that it was premature to appoint a committee where there's not yet been a determination that substantive consolidation is going to occur. So we are kind of painted into a corner.

If we say that you are too early or you are too late, when is the exact moment to ask for this relief?

I think that the swell of activity leading up to the formulation of the plan and our attempts to get involved and be included in the way that things turn out and the deal that was struck by MCI noteholders less than 100 percent on the dollar which we truly believe

they are clearly entitled to if you invalidate these intercompany claims.

Who knew is the point. And I don't think we can be accused of being too late when we may have been accused back then of being much, much too early.

THE COURT: I'm not so sure, and I want to go back to the Enron decision, I think there were different arguments being made as to why there should be a separate committee, but there was an entire decision there should be a separate entity for the alleged values -- issues that you allow as well.

But there was a different composition there and then I see before me today, and I still don't buy it, your motion is not the substantive consolidation. It was for the representation that was present; that those representatives moved in a decision that you didn't expect they were going to meet.

MS. MOSS: Well, in responding to the debtors' conclusion that the subsequent recording is why the report is going to be and one would expect the MCI, and I'm sure they did

in some respect, I'm sure that's the basis for the settlement that they struck, that they would have challenged the intercompany claims on which the debtor relies.

However, the fact that they have permitted there to be no recovery to other creditors of MCI and permitted there to be a clearly reduced recovery to other creditors of MCI, referring to the trade creditors who have rejected this as well, or as for the appointment of a trustee, I think that it's clear that that is the swell of activity at all those meetings that occurred and the plan negotiation process, starting with the debtors' consolidation with subsequent consolidation, and moving on from there it seems to me that there was a time that it started to become apparent that there would need to be a separate committee.

I think that, as you Honor knows, we requested to have this relief heard in connection with the trustee's motion. We thought that would be the appropriate venue for it.

I understand your Honor procedural concerns with respect to that request and we were asked to file a separate motion and now, in fact, we have a separate hearing date.

But if your Honor had, if that would have been considered with the trustee's motion, it would have been heard two weeks earlier than today.

So I don't know if timeliness is an appropriate basis for this Court to determine that a separate committee is not appropriate.

We also have 90 days between today and the confirmation hearing during which a separate committee could actively become involved in the discovery process and I don't think that it needs to be delayed to what your Honor has set out as a schedule.

THE COURT: Thank you. I will hear from other parties in support of the movants first before I hear the opposition.

MR. BENTLEY: Good afternoon, your Honor. Philip Bentley of Kramer Levin on behalf of the dissenting MCI bond holders.

Your Honor, I would like to address

myself to the issue that the Court raised with Miss Moss, specifically when did it become apparent that the Committee's representation of MCI was inadequate.

And, your Honor, without repeating the evidence that was explored at great length at the recent trustee hearing, our position is, the answer is that it became very apparent that this was the case last month in April when the plan was filed and when discovery was taken in connection with that plan and in connection with the trustee hearing.

And three critical points, your Honor, came out at that time, which your Honor will recall from the evidence of a few weeks ago, but I think it is helpful to briefly review them here.

Prior to last month, there had been disclosure that there were intercompany claim issues, significant intercompany claims. However, prior to last month there was no inkling at all in the public what had been publicly disclosed; that the intercompany plans might be anywhere close to the magnitude that

we now understand they are asserted to be, that is, a magnitude that would be sufficient to invert the structural superiority that, according to everything that had been publicly disclosed up to that time, should have been enjoyed by MCI creditors.

Intercompany claims that we are now told are of a magnitude to warrant a substantial recovery to World Com bond holders at the same time that MCI creditors are receiving only about, under the proposed plan, only about $3 billion for their roughly 6 billion dollars of debt.

So roughly $3 billion is being paid in connection with MCI creditors, given to creditors of the parent in an inversion of the usual structure of superiority, and the rationale that's been given for that and that the Creditors' Committee has endorsed in endorsing the plan is this enormous magnitude of intercompany claims, but the entanglement that we heard about in the creditors view and the committee's view subsequent to consolidation.

This was not something that was apparent. This was not something that was disclosed prior to last month and there were two other critical facts that weren't disclosed prior to last month.

The first was that as you came out of the record of the trustee hearing, the great bulk of the intercompany claims consist of a single type of claim, these royalty charges that your Honor heard about. Some 19-and-a-half billion out of a total --

THE COURT: Isn't that the great bulk of the net difference between the intercompany claims and not the great bulk of the claims themselves?

MR. BENTLEY: It is the great bulk of the net intercompany claims that have been identified to by date by the Committee's professionals owed by the committee's companies in aggregate to the other debtors, 19.5 billion, the total of all intercompany claims that have been identified to date that run from the MCI companies collectively to other debtors, the Committees's professional has said

it is 24 billion. So you have 19-and-a-half out of 24.

But also what wasn't disclosed before last month is that these royalty claims are really extraordinary and it doesn't take a lot of looking at them to see that there are issues that jump off the page as being suspect and is crying out for investigation.

Just to tick off two of the more salient points that jump off the page, 19-and-a-half billion dollars in debt based on royalties for a consolidated World Com enterprise that is now being valued at $12 billion, substantially more than the whole value of the enterprise even though these royalty charges accrued over a period of just four years.

And the reason the royalties get to that incredible magnitude is that they are being assessed at a rate, your Honor, I've never heard.

We have done some digging and the Court will hear expert testimony on this at confirmation. We never heard of royalty

charges getting anywhere close to the magnitude of this if you compare them to the gross revenues of the debtors 19-and-a-half billion figure, equate that to 15 percent of the gross net that the debtors earned over the three-year period the royalty accrued, 15 percent of gross revenues, it's an extraordinary numbers.

But we learned last month the Committee and its professionals has not begun any serious look at the royalties. We heard they may have had their lawyers look at the royalty charges but we learned they didn't ask FTI to look at the royalty charges even though someone who wants to look at them seriously would have to look at very detailed calculations that were viewed by the debtor each year to justify the royalty charges and that's not something that lawyers are asked to do.

That's something that FTI or the other nonlawyer professionals also would have done. So, as your Honor heard, the debt has not been done.

So that was another recent

disclosure in which the Committee has not adequately represented the interest of MCI.

Clearly if MCI had its own committee it is no question they would have selected their people on this issue. There would have been in depth discussions of this issue.

Finally, your Honor, the third category issues did not come out until it was known until last month relates to the entanglement justification that has been given for just consolidation.

Your Honor heard testimony about that from the depositions. FTI or Alex Partners concluded they come up with an exact figure to consolidate all the intercompanies accounts between all the debtors it would take 211 person years.

It is a very precise figure and it suggests someone spent time figuring it out, giving it real thought to backing out that number and giving it continue with the was not done at the same time.

That was a computation that was apparently done to back up, to defend the

position that MCI should be consolidated with World Com but wasn't.

What we are looking at is there any way to cut through how the Gordian knot to solve this problem that we are being told can't be valid, and we have heard evidence and you will hear a lot more confirmation that there are serious ways to cut through the Gordian knot.

In following the supposed Gordian knot really a red herring, your Honor, and in a nut sell, the illusion and the error that is being put forward is that one has to look transaction by transaction.

You heard there is a trillion dollars of intercompany transaction. I think 25 million in transactions. The illusion wants you to look at each transaction one by one.

The solution that nobody has looked at, the Committee has not, the debtors have not, looked at the net balances that are owed by the MCI to the other World Com debtors and that, we believe, your Honor, is why will explore this more, but what you heard two weeks

ago that has not been done.

The Committee has not done any looking on that issue and that, your Honor, together with the other points that I mentioned, those are all new disclosures and none of those were out there in the public record prior to last month as reasons why it is urgently needed that a fiduciary be brought in to represent the MCI creditors.

I would note that the MCI debtors if looked at alone would by themselves be the largest bankruptcy ever, I believe, other than World Com. We just took Red Lobster separately, so it would be the largest bankruptcy.

Only so, the cost of consideration should not be a major ground, a sufficient ground for denying entry of those entities.

I understand your Honor has a significant concern about bringing the case to conclusion, and we understand that appointing a committee at this late point it would be a concern. It could slow down proceedings.

We think, your Honor, there is a way

that could be done; that a committee could retain professionals who are up to speed on this issue who could be prepared to take these issues and have them at objection.

We submit this is the best outcome, and we submit if the Court were to appoint a MCI committee you would probably see rather quickly MCI's settlement that would probably reflect the MCI creditors and that would bring this case we think to a quicker, smoother, more consensual conclusion that would be less at risk of holding up that confirmation or more than the Court concluding in August that the plan cannot be confirmed. That, your Honor, we submit is the preferable way to go.

THE COURT: Anyone else?

MR. GERON: You Honor, Yann Geron. My name is Yann Geron. I was retained only recently by Wilmington Trust Company.

As your Honor knows, we have filed a joinder to HSBC's motion. Wilmington Trust Company is serving as property and guarantee trustee and for the same trust where HSBC is serving as the indenture trustee.

As the Committee noted in its papers, in a footnote of its papers, there has been a screening wall as the Committee called it put in set up between Wilmington Trust's role as the property and guarantee trustee and Wilmington Trust's separate role as a member on the Creditors' Committee on behalf of a different trust, and on January 23, 2003 Wilmington resigned its indenture role in the trust as a result is called MCI Trust and HSBC assumed that role.

Wilmington Trust, and we noted in our papers as well, is in the process of resigning as property and guarantee trust to the Capital MCI Trust, and it is expected, although not yet confirmed because I think it has to be done by an act of a court in Delaware, that HSBC may be appointed as successor in those two capacities.

During this interim period, Wilmington Trust again as property and guarantee trustee has joined in HSBC's motions as the indenture trustee mostly or largely as a precautionary measure to enforce any of MCI

actions as indenture trustee.

I will not belabor the record by adding anything on the substantive consolidation argument made by Miss Moss and other counsel.

I will just note, your Honor, in earlier colloquy by counsel the Court asked whether Wilmington Trust formally as indenture trustee took any objection or steps with respect to the committee membership, and I can only tell you that since I've come on to the scene, I have not been made aware of any steps or actions taken by Wilmington Trust or papers filed by Wilmington Trust in that regard.

THE COURT: Thank you.

MS. SCHARF: Good afternoon, your Honor. Leslie Scharf from Brown, Rudnick, Berlack and Israels on behalf of the MCI ad hoc committee.

THE COURT: Restate the name of your firm.

MS. SCHARF: Brown, Rudnick, Berlack and Israels.

Just simply for the record we would

like to state that we appreciate the motion of the indenture trustee for the reasons set forth in her papers.

THE COURT: Do you believe that the MCI trade creditors are not adequately represented on the committee?

MS. SCHARF: I think that given the structure of this case, your Honor, I think a separate committee should be implemented and put in place.

THE COURT: All right. Anyone else?

MR. CHUNG: Good afternoon, your Honor. Nancy Chung from Akin Gump on behalf of the official committee.

THE COURT: You didn't rise in support?

MS. CHUNG: No, your Honor.

THE COURT: Let me finish that first.

MR. CHUNG: I'm putting on objections.

THE COURT: It will be next. Anyone else want to be heard? I will hear the

opposition.

MR. CHUNG: Thank you, your Honor. Before turning the floor over to Mr. Golden for his presentation on behalf of the Committee's motion, we wanted to raise two matters for the Court.

First, the Committee seeks to move exhibits into evidence which are contained in two bound volumes premarked by the court reporter as committee Exhibits 1 through 7 containing the full deposition transcripts of Mr. Capellas, Mr. Savage, Mr. D'Amico and Mr. Fragen that were taken in connection with the trustee's motion hearing, as well as the three reports prepared by FTI Consulting, the Committee's forensic accountant.

Second, Miss Moss referred in her presentation to certain statements made in Mr. Rosner's letter which were attached as Exhibit C to her affidavit.

In addition, there is reference in HSBC's memorandum of law to other letters by counsel attached as Exhibits A through F to her affidavit. The Committee is not objecting to

the admissibility of those exhibits for purposes of this hearing.

However, we wanted to note for the record that these letters are letters of counsel advocating the positions of their perspective clients and are fraught with opinions and assertions that are not necessarily statements of fact and, therefore, we ask that the Court take that into account in giving those letters as part of the evidentiary record the appropriate weight.

THE COURT: Thank you.

Is there any objection to the admission of the documents identified by counsel for the Committee?

MS. MOSS: No, your Honor. I believe those documents are already in the record but to the extent --

THE COURT: They are in the record from the prior hearing?

MS. MOSS: All the items are in the record and I believe the FTI items are in the record as well.

If I could just respond to Miss

Chung's comments with respect to the letter.

I just want the record to be clear to either the authenticity or the admissibility of those documents.

The Committee appears to be commenting or characterizing their view of the evidence, and to the extent they would like to argue that to the Court, I have no problem with that, but I just want the record to be clear that they have agreed to the authenticity and admissibility.

MR. STROCHAK: We would like all the deposition transcripts in their entirety from the trustee hearing put into evidence in this proceeding.

I'm not quite sure if counsel from Akin tends to put them all in or if the Court has copies of all of them. I can supply copies if you need it.

MS. MOSS: I have no objection to you putting all copies in. We contacted chambers so, apparently, we are not clear whether they have them or not. We have a set for the Court and we have an additional set to

the extent anyone needs one.

MS. CHUNG: Your Honor, to clarify the record further, our understanding was that all of the exhibits that were submitted in evidence in connection with the trustee's motion were committed for purposes only of that hearing; therefore, for the Court's eyes we submit additional exhibits for the purposes of the hearing today.

MS. MOSS: As I stated in the beginning of my presentation --

THE COURT: You moved into evidence the exhibits from the prior hearing.

MS. MOSS: And if the Committee is objecting to that, I would ask that the Court hear that objection and discuss it because I think I made clear in my moving papers and in my memorandum our intention to rely upon that record and, in fact, as I pointed out, the report would have been one of the same if the court had heard our motion simultaneous, which was our original request, and for procedural reasons I believe that the motion was put on separately.

THE COURT: It was your request. But it was your request put in the context of a joinder with the appointment of a limited trustee; is that correct?

MS. MOSS: Yes, your Honor. It was request for additional leave.

THE COURT: All right. Let me hear then from the Committee.

Was there any objection to the admission of the original statement by counsel for the ruling to admit the prior documents?

MR. GOLDEN: To move this along, we are not going to raise an objection to the submission of the entire record. We think it is properly overbroad. We are not going to waylay this proceeding by going through each and every exhibit that was produced in connection with the trustee's motion and we will not raise any objections at this time.

THE COURT: All right. They are admitted. Go ahead.

MR. GOLDEN: Shortly after the filings of this Chapter 11 cases, the U.S. Trustee held an organization meeting to appoint

the official Creditors' Committee pursuant to Section 1102 of the Bankruptcy Code.

It's consistant with her mandate of U.S. Trustee at that time appointed a 15 entity committee consisting of representatives of the various debt claims of the debtor.

The official committee consisted of World Com Bank debt holders, World Com public debt holders and its indentured trustee, MCI public debt holders and its indentured trustee, MCI trade creditors, Intermedia and its indenture trustee, and as this Court has recently found in connection with its decision on the trustee's motion, the current composition of the Committee consists of 14 members, six of which hold or represent MCI indebtedness, or to say it in another way, more than 40 percent of the entire committee represents MCI committee.

Now nine months later from inception of the cases, an indenture trustee for the MCI subordinated debt has moved for appointment of a separate committee for all MCI creditors. That's what the pleadings say, your Honor.

But to hear Miss Moss' presentation it was unclear whether she was seeking a committee for all MCI creditors or simply a Creditors' Committee for only the MCI subordinated debt.

And I think your Honor zeroed in on that point and I'm not sure we got a clarification because I think it is beyond question that the current composition of the Committee does adequately represent all MCI creditors, especially those that hold MCI trade debt and certain other debt, and the issue seems to be is there adequate representation with respect to the MCI sub debt.

In order to put this motion and the case of interpreting Section 1102(a)-2 in its proper context, I think it is important for there to be a review of the Committee's efforts over the last nine months of this case, and during that time the Committee has met regularly both with its own professionals and the debtor professionals on nearly a daily basis to discuss, probe, evaluate, pending legal and business matters related to these

matters.

The Committee analyzed and evaluated the debtors one year and three-year business plan.

At that time, the Committee analyzed, evaluated and took issue with over 400 motions and various motions filed in connection with these debtor cases.

The Committee through its efforts obtained a forensic accountant who analyzed the companies 25 million pre-petition intercompany transaction totaling approximately one trillion dollars in debt in order to try to make sense of that intercompany arrangement.

And in that regard the Committee specifically negotiated a mandate for the work product of FTI so that there would be no allegation that their conclusions were prejudged by taking sides within the membership of the Creditors' Committee.

Through Houlihan, Lokey, Howard and Zukin the Committee obtained financial advisors and there was a development of an enterprise model.

Based upon the intercompany matrix, which models we utilized in various constituencies in the planned negotiation we had leading up to the planned file, the committee worked with this examiner in his inquiry into the debtors' premotion fraudulent conduct.

The contract analyzed, the major contract committee analyzed, evaluated the FCC and other regulatory issues before and impacting the debtors' business, analyzed complex tax issues in relation to other things, with the utilization or ability to avail themselves of the net prepetition operating losses.

The committee evaluated numerous access petitions between debtors and their former officers and directors and the committee played an integral role in the negotiation of debtor end financing, negotiated debtor key employee retention program, the hiring of Michael Capellas, debtor's new CEO or relatively new CEO, he played an active role in the negotiation of the penalty phase of the FCC

enforcement action; and, finally, and perhaps most importantly, the Committee placed a very significant role in the negotiation and formulation of the debtors present plan and organization and the complex issues underlying that plan of organization.

It is against that factual backdrop that the indenture trustee for the MCI subordinated note comes to this Court almost 10 months after the inception of the Chapter 11 case in an effort to seek to bring all of that process and progress to a crashing holt saying I'm seeking a separate committee for the MCI creditors, and I think you need to ask why, and the answer to that question from our perspective is evident.

It is the same reason that the dissenting MCI bond holders and the ad hoc trade creditors just brought their motion.

They are dissatisfied with this plan treatment, and that reason and that reason alone sometimes seems to be the motivating force for both the trustee's motion and the current motion for the appointment of an MCI

Creditors' Committee.

But as this Court has recently determined in connection with the trustee's motion, both is simply not valid for the appointment of an MCI creditor and it is not the appropriate rationale for the appointment of an MCI Creditor Committee if you review the legal standards underlying 1102 A-2 which we think is key here.

That section provides on request of a party's interest the Court may order the appointment or additional Creditors' Committee or of equity security holders if necessary to ensure adequate representation of creditors or equity security holders.

And your Honor has recently had the opportunity in the Enron case to have an added in depth review of the case law that has interpreted it, Section 1102(A)-2 of the Bankruptcy code.

I think it is very clear from the prior case, and you Honor held in the Enron case, it is primarily three factors the Court looks to in trying to assess whether there was

adequate representation or not.

First, the ability of the existing committee to function effectively.

Two, the nature of the case and, third, the standing and desires of the various constituencies.

As your Honor noted, and continuing on in the Enron decision, there are additional but related factors, including the ability of creditors to participate in a case without the official committee with the power to covers expenses pursuant to Section 504(B) of the Bankruptcy Code, motivation of the movant, the Court to be induced by the additional committee and the presence of other avenues for creditor participation.

There has been significant case law in interpreting these factors, much of it cited in the opposition filed by both the official Creditors' Committee, the debtors and the Office of the United States Trustee.

A review of this case laws makes several things perfectly clear.

First, the first aim of a single

Creditors' Committee is the norm in Chapter 11 cases as the Court intended the different problems to be resolved within the context of a separate committee.

Two, the appointment of a separate committee especially so late in the game, especially after a plan has already been filed, is an extraordinary remedy and, therefore, a very high burden for the movants to sustain.

In attempting to determine whether there was adequate representation, we reviewed MCI and HSBC's motion and their subsequent memorandum of law, which I will mention in a moment, to try and claim the factor that they were relying upon to determine that there was no adequate representation by the existing committee.

Essentially, those factors could be summarized as follows: First, that MCI had no fiduciary.

Two, creditors of MCI has been disenfranchised.

Third, since the Committee selects the plan which has recently been filed by the

debtor and the plan group has no plan for MCI debt, MCI needs a separate Creditors' Committee.

Fourth, indenture was not added to the official Creditors' Committee at its request.

Next, HSBC was not invited to the plan investigations and, finally, that the MCI creditors on the committee do not represent all MCI creditors.

Just as an aside, your Honor, HSBC filed its motion on April 30th and in that motion it stated at paragraph 17, and I will quote, "Because this motion does not raise any novel issue of loss to HSBC that this court weigh that the requirement contained in rule 1930-1(b) of the local bankruptcy rules that a separate memorandum of law be submitted in support of the motion."

And yet 25 days here on the eve of a holiday weekend at approximately 5:15 this afternoon and only one business day before this hearing was to convene HSBC filed a memorandum of law and an attorney affidavit annexing 11

exhibits.

I guess this is the appointment you would be looking for on behalf of the MCI creditors.

In Miss Moss' commentary before, your Honor, which I assume understood lack of adequate representation, one, was the alleged characterization of a letter drafted by my partner, Ira Dizengoff, regarding the legal characteristics of the preferred quips, or quizzes as they are commonly referred to, in an effort just to put that off to the side and get the record straight, MCIC has issued face amount $750 million of subordinated debenture to one holder, MCI Capital One, in a back to back transaction. MCI Capital One has issued to the public preferred instruments.

I would acknowledge to the holders of those interests indicating debentures issued by MCIC to MCI Capital One, but the actual holdings that are out in the hand of the public are a preferred instrument, and that is the point that Mr. Dizengoff made in his response to his request of the U.S. Trustee as to his

opinion which HSBC saw as an admission to the state.

I'm sure the Court is interested in tis topic. The U.S. trustee can take a big a role that is.

And Miss Moss continued that no party, not the debtors or the Creditors' Committee sought a distribution for the holders of the MCI subordinated debt.

Your Honor asked I thought a very insightful question: Why when MCI senior debt is not getting paid in full and, in fact, is taking a substantial hair cut of more than 20 percent, would there be some kind of suggestion that MCI subordinated would be entitled to any recovery other than in the context that she wants settlement.

And further on that same point, Mr. Savage did indicate in testimony that I will refer to that it was a view of the debtors that the subordinated debt work at getting recoverage was simply as a result of contractual determination that that recovery had to be returned back to the holders of the

MCI subordinated debt into the hands of the senior debt held by the MCI senior holders, and I refer your Honor to the Savage deposition at page 237, line 12 to page 28, line 2 and again on page 27, line 15, to page 248 to line 9, and finally page 252, lines 8 through 19.

In the complaints raised by HSBC, both in its pleading and oral presentation, you never once hear that any of the obligations of the existing Creditors' Committee based breached in any way its fiduciary duty.

The reason for this is clear. They never did. This committee has worked arduously to maximize credit for all creditors and to make sure of an adequate distribution of those assets.

HSBC complains that they were never invited to participate in the planned negotiation.

That's hard to imagine given the fact that they concede in their papers they signed a confidentiality agreement. They were given access to the settlement agreement and they were accompanied by our sophisticated

reconstruction counsel.

I am quite certain that if they wanted to find their way to the bargaining table they would have known how to do so.

As the Court determined in connection with the trustee's motion is that HSBC simply wrote why the ad hoc committee should protect the individual's interest, and this court found it to be of little incidence to its trustee position.

In fact, there were at least five other instances when parties were asked either for admission to this, I believe, Creditors' Committee or for the appointment of a separate equity committee.

In fact, a group of special counsel, supervisors, a group of former employees, Aerotel, one of the joinders do today's motion and a proposed request was made by one for this trustee.

In each transaction the United States trustee acting in its powers and under its mandates has determined that this official Creditors' Committee does, in fact, represent

the various credit creditors of the case which says all of those requests can be denied.

So HSBC has failed to file a single motion regarding the inability of this Creditors' Committee function to success to deliver efficiently and discharge after duties to all creditors. I won't repeat the litany of actions taken over the nine months.

Suffice it to say I cannot recall one episode, one instance where any committee member has come to this Court and complained that its view was not taken seriously by the Committee.

The nature of a case, your Honor, as you noted in the Enron decision size and complex alone does not mandate an appointment of a separate Creditors' Committee.

In fact, I think it is quite easier to say the appointment of a separate committee would maximize not minimize it.

It has been made clear by two HSBC motion and the other behind the premise of consolidation, but, as your Honor made clear at the consolidation, that fight is not before

us. That will have to await the confirmation.

With respect to the parties standing and desires of various constituencies, HSBC has asserted once again without factual or legal support that this case and this Creditors' Committee has been dominated by parties motivated only to further the interest of World Com and Intermedia creditors. This assertion simply cannot sustain scrutiny.

The total department obligations of these debtors is in excess of $36 billion dollars exclusive of intercompany claims, which MCI has funded and claims only approximately 20 percent, and yet as I stated more than 40 percent of the Committee consists of MCI creditors.

The MCI creditors under the proposed plan is receiving a discovery with par and the MCI senior debt is receiving a recovery, a substantial premium over that which is being researched by the World Com creditors.

I don't think there's been any actual definition of this Creditors' Committee and creditors to the disadvantage of the MCI

creditors.

What HSBC really appears to be arguing about or is unhappy about is the contractual insubordination contained in its indenture and the fact that it cannot receive payment until its senior creditors are paid in full, a fact that is not going to happen with the debtors current plan of reorganization, and HSBC makes much of the fact that there is no MCI debt holder. As your Honor knows, there are no shoes not wet.

The Creditors' Committee is an exact replica of the creditors' body. Whether it is the other factors generally considered by courts in making an 1102 determination strongly suggest that the request for a separate MCI Creditors' Committee is unwarranted and unnecessary.

The creditors represented by HSBC, the sub debt holders, the group of creditors calling themselves the dissenting MCI bond holders, a group of trade creditors, I don't know if they are getting MCI's creditors, are all represented differently by different

counsel from their firm.

Mr. Weisfelner firm and Miss Moss' firm know how to advocate the interest of their clients, and you've already heard time and time again in both these and presentations how they intend to do so leading up to the confirmation really.

And each of these counsel has resorted to 503(B) under the Bankruptcy Code so they don't have to carry the financial burden if they can sustain the standards set forth in that section.

The motivation of HSBC that brings this motion at this time we believe is self-evident. They are seeking a funded estate representative to oppose confirmation.

But the case law is clear under Section 1102 that the debtor's estate should not be compelled to fund a direct group of creditors to litigate an issue that would appear not to be in their interest alone and would provide an interest to the debtor's estate.

I think it is also clear that the

appointment of an additional Creditors' Committee would increase the amount of these cases and would jeopardize and delay the substantial progress that has been made to date.

The cost benefit analysis that your Honor alluded to on page 23 of your decision with respect to the trustee motion we believe is equally true with respect to the current motion.

The time for delay in making a few cases is over. These debtors with the very able assistance of a dedicated group of official creditor members, despite the compensation, suggest the most significant turnover in U.S. history.

It is unfortunate but not surprising all seeing that debtors and the committee cannot reach a full 100 percent plan reorganization with each and every one of the creditors, but having reached in court with creditors well over 90 percent of the total debt structures appears to us to be quite a remarkable feat.

It is time to let this process unfold. It is time to allow confirmation to begin without the intervention of new trustees or new official committee, Creditors' Committee whose sole purpose is to deny the plan for the reorganization. That is in our opinion and our view does not call for an additional creditors committee, we believe the motion must be denied.

THE COURT: Before I hear, I assume I'm going to hear from the debtor and the U.S. Trustee office and I don't know who else wants to be heard. Miss Moss. That's fine. I'm going to take a ten-minute break, 20 after five by that clock. We will come back and continue.

(A break from the record was taken.)

MR. STROCHAK: Good afternoon, your Honor. Adam Strochak for the debtors.

The issue here, your Honor, the complaint here is not about the abdication of fiduciary duties, but it is really a complaint about the way those duties are exercised.

The fundamental issue here, HSBC's

fundamental complaint is that it doesn't like the result of the process, a plan that emerged from the process that was undertaken when these cases commenced in July of last year.

Mr. Golden has gone through the law and I won't repeat what he's done here. What I want to do is take a little time to focus on the specifics, the evidence that's before the Court from the record on the trustee motion and focus specifically on the particular areas in which the movants and the folks who filed joinders contend that the representation here was inadequate, and the first area raised is the size and complexity of these cases.

The easy answer to that, your Honor, is that there is a 14 member committee that's been appointed in these cases.

You have a situation where there certainly is no dispute this is a complex case and a large one, but as the Court indicated in the Enron opinion, size and complexity are not determinative of whether additional committee should be appointed and were when you really look at it closely, we have what is

fundamentally a one issue dispute, it going to be hotly contested as we have seen over the past couple of weeks in this court room.

It is a one issue dispute, does the plan the debtors propose properly focus on consolidation and can it be confirmed on such confirmation? That's the issue.

It is not such an issue that would require an additional committee to start investigating. Everybody knows what the issues are. They have been explored at length in eight depositions that are before the Court already.

They have been pursued. The arguments have been pursued and investigated by able counsel on behalf of the dissenting creditors from at least three different law firms and probably more and there simply is no complexity here that can't be dealt with through the ordinary confirmation objection process, and that's really what they are complaining about is that this plan, the plan the debtors proposed, doesn't give the distribution to the MCI sub debt, and that's

why the bankruptcy code allows any creditors to object to the plan of reorganization.

If an elected plan, they can object to it. The code doesn't limit committees to objecting to a plan. They have standing. They can object and there is no reason that they can't pursue those objections at confirmation.

So that factor we will submit, your Honor, simply does not support the allegation that there's been a lack of adequate representation in this matter, and that, of course is the movants burden to establish.

The threshold issue here is has the movant demonstrated through record evidence that there's been a failure of representation, a lack of adequate representation. If they don't cross that hurdle, we don't even get to the discretionary analysis.

The second factor alleged is that in less than a year the debtors have proposed the plan. That the plan is based on substantive consolidation and the presumed validity of the MCI World Com intercompany claims, that is, between the two groups of companies.

We heard a lot about this in connection with the trustee's motion, your Honor, that somehow it was a bad thing that the debtors in conjunction with the committee have moved expeditiously through the Chapter 11 process and have proposed a plan relatively quickly after these cases commenced. I would submit your Honor that's laudable, not something that should be criticized.

Again, though, this is a confirmation issue.

The record from the trustee hearing demonstrates unequivocally that the debtors and the Committee have investigated intercompany claims and reached an informed decision as to an appropriate plan to propose in light of all the facts and circumstances that existed surrounding those plans.

Simple disagreement with that decision does not constitute a failure of the representation of the members of the Committee warranting appointment of an additional committee, and I would direct the Court's attention to page 15 of the decision issued on

the trustee's motion where the Court indicated its conclusion that it appears that the movants, that is, the movants and the trustee motion simply disagreed with the conclusions drawn by the debtors after the debtors extensive investigation and analysis of issues concerning substantive consolidation and intercompany claims.

There is no evidence that suggests that those issues, the existence of those issues, constitutes a failure of the representation of the Committee members.

The evidence moreover introduced at the trustee hearing demonstrates unequivocally it wasn't debtors alone looking at the issues. It was the debtors hand and hand with the Committee.

The evidence is unambiguous and undisputed that FTI, the Committee's forensic consultants, played a prominent role in investigating the intercompany claims, worked co-objectively with the debtors to share information and that the Committee's professionals provided extensive information to

members of the Committee participants in the negotiation so that everyone would have a common knowledge base going into the negotiations as to what the critical issues were.

With respect to the speed in which we moved to the plan process, your Honor, I don't see how we could have given people more notice.

Mr. Capellas announced in January in a press conference to the world that the debtors intended to propose a plan by April 15th.

That we stuck to that schedule should not surprise anybody.

My partners and I have advised the Court at various status conferences, case status conferences over the last several months that the debtor intended to stick to that schedule, if at all possible. So the fact that we actually did it should not be thrown back at us and somehow a factor that demonstrates that there was inadequate representation with respect to various creditor groups.

The world new about it and to the extent anybody wanted to propose a plan to us for consideration we were available.

The third point, your Honor, is that the official committee structure is inadequate to represent the interests of MCI creditors, and I think, as the Court has noted, the complaint here is really that it is inadequate to represent the sub debt. That's the fundamental premise of this motion.

But even looking at it in the broader context with respect to all MCI creditors, the fundamental argument is that the MCI companies have 90 percent of the asset value but only 40 percent of the seats on the Creditors' Committee, membership of the creditors committee.

That, your Honor, respectfully turns the inquiry on its head.

We think the appropriate analysis is to look at the debt, that is, who holds the debt, and if you look at where the debt lies, you have a substantial portion of the debt at the World Com entities.

So it should hardly be a surprise to anyone that 60 percent or so of the members of the Creditors' Committee were nonMCI creditors, that is World Com creditors or Intermedia creditors because a substantial portion of the debt is at World Com.

And if you look at how much of the debt is real as stated with respect to the subordinated upon holders there, is $750 million in total out of 38 or so billion dollars in bond debt.

Maybe the number is 36 total. Maybe the number is 40 totally amount. I misspoke. I didn't mean to say bond debt. I meant total debt for the entire enterprise.

I did the math this morning quickly and it is about 2 percent. They represent about 2 percent, probably less than 2 percent of the entire debt.

The standard is not proportional representation. It is not the Committee must have exactly the same percentage of MCI creditors as either asset value or total MCI debt exists. The idea is that the key is

representation.

It is what folks actually do, not who they might be slotted to in terms of particular seats on the committee.

They have made no showing that the Committee in this case is not functioning, that it is hopelessly deadlocked. Simply no evidence whatsoever. In fact, just the opposite.

We have a committee that largely supports the plan that the debtors have proposed. We have moved quickly and cooperatively through the plan process and the Chapter 11 process and are now on the eve of confirmation a few months ahead of us.

The second point that they raise with respect to the structure of the Committee is the allegation that the trade creditor representatives on the committee, the MCI trade creditors representatives, AOL and EDS, have somehow no fulfilled their fiduciary duties. This has been a lurking issue with respect to the trustee motion.

There is absolutely no evidence in

the record whatsoever to the effect that those two members of the committee failed in any way to fulfill their fiduciary duties or have not adequately represented the creditor constituencies.

We have had nothing but innuendo about it but no evidence at all that there's been any breach of fiduciary duty or anything to that effect.

The only evidence that they cite, that the movants cite is that the result is a plan that provides for no distribution to the subordinated bond holders on account of the roll up to the senior debt due to the contractual subordination provision.

The next point they make with respect to adequate representation is the allegation that somehow the entire plan process was handed over to the Matland Paterson Group and David Matland, who somehow co-opted the whole process and slanted it toward World Com bond holders. That, your Honor, is not supported at all in the evidentiary record.

HSBC misleadingly in our view cites

to a snippet of deposition testimony from Mr. Capellas's deposition and kind of slights it for the proposition that Mr. Matland and his group was driving the plan negotiation process at the behest of the debtors.

That is simply not what the record demonstrates.

The deposition of David Matland himself on page 33 through 36 and again at 39 through 40 indicate that Mr. Matland got involved in the planned process at the behest of Mr. Savage in order to try and get the constituents to the table in order to get a deal done.

Mr. Capellas himself testified that Mr. Matland was the catalyst for serious negotiations among bond holder groups but not in any way that this plan process was given over to Mr. Matland as a representative of World Com bond holders.

Again, Mr. Capellas's deposition at pages 45 and 46, I will just paraphrase, Mr. Capellas's testimony was that he had exactly a one-on-one meeting with Mr. Matland.

It was an introductory meeting.

They discussed primarily the telecommunications business. They probably talked a little bit about the plan. He stressed, Mr. Capella stressed to Mr. Matland the importance of a quick emergence from Chapter 11 due to competitor pressure and essentially just asked Mr. Matland, said to Mr. Matland that anything he could do to drive the plan process toward conclusion would be appreciated.

And, simply, there's simply no evidence in the record that this process was co-opted in any way by any one creditor or any one creditor group.

Turning to the next point, the next point is that the entire creditor constituency somehow was excluded from the planned development and negotiation process, and there are a couple of subpoints here.

HSBC argues that, well, it is requested. It's formal request to join the official committee was rejected and there is no explicit representative of the subordinated

debt invited to join in the planned negotiations.

They argue that neither the debtor or any committee member ever took the position that there should be a distribution to the sub debt and essentially argue in conclusion that creditors of MCI were left with no meaningful role in the process.

Again, your Honor this is not supported by the record in this case.

The record indicates Exhibit F, Miss Moss' letter to my partner Marcia Goldstein of March 26th. It was just a request for information.

They had contacted us a couple of days before, indicated they wanted some information to facilitate their analysis of plan issues. We, subject to an execution of a confidentiality agreement, provided information to them and, essentially, never heard back from HSBC.

HSBC never came back and said, here's a proposal. Would you please consider it. They never came back and asked to

participate directly in the negotiations and the idea that somehow we are at fault and the representation has failed because an explicit invitation to the process was not issued is simply incorrect. They are represented by able counsel.

They certainly could have asked to participate. They could have made proposals. They could have entered directly into negotiations with us. That simply did not happen in this case with respect to the subordinated debt holder.

Contrary to HSBC's assertion, there were, in fact, some discussions of some sub debt issues in negotiation with the planned negotiation.

Mr. Capellas testified at page 112 through 113 of his deposition that, in fact, he did recall somebody mentioning the sub debt issues.

Mr. Savage testified at page 252 of his deposition that it was his impression that, in fact, the negotiations did take into account the interests of the subordinated debt, but

they took it into account because it rolled up to the senior debt, that is, everyone came to these negotiations with a basic understanding and premise that the positions on the table were for less than a 100 cents recovery for the senior debt, so it is only a natural inclination on everybody's part if any of the subordinated debt got any recovery that it was going to roll up to the senior debt and the assertion that somehow this warrant the appointment of an additional committee with all its expense, the risk of delay and the risk of substantial complication of these proceedings it is just simply incorrect, your Honor.

It is as if an equity holder stepped up and said an equity holder equally well could have asked the same questions in the deposition and gotten the same answer? Did you distribute a distribution to equity?

And, of course, the very easy response to that would be, well, everyone looked at it and thought the value was insufficient to distribution to equity so, therefore, to that extent it was considered and

immediately disposed of that issue. The same thing applies in this circumstance.

It is very clear that the only adequate representation that these movants would ever find is representation that came out and opposed the plan that we had proposed. That's what they want.

They want a committee to pursue the plan objection that they are capable themselves of pursuing and I'm quite certain will be pursued by other able counsel in these proceedings as we have seen over the last several weeks.

Let me address a couple of issues in closing that arose from argument of the parties.

First of all, there has been perpetuated here and carried over from the trustee hearing a very misleading characterization of the intercompany claims.

Mr. Bentley has argued and Miss Moss has argued that this is not such a hard issue.

If you just look at it a little differently, you'd come to the conclusion that

they advocate, and I assume will advocate at confirmation, that is, you don't have to look at the trillion dollars in intercompany claims. You don't have to worry about the $300 billion of intercompany claims where the debtors have determined that they can't at this juncture determine exactly who the counter parties are on both sides of those transactions and properly analyze all them.

They say you don't have to worry about all the intercompany claims between the MCI entities. All you have to do is look at the net intercompany claim owing from the consolidated MCI entities to the consolidated World Com entities and they contend, well, that's only about $24 billion of which 19 million or so, 19 billion or so is the royalty claims that the Court has heard so much about.

That is an exceedingly misleading characterization, your Honor, of the analysis that the debtor and the committee undertook and is spelled out at length in the exhibits and deposition testimony the Court has before it from the record of the trustee hearing.

It would be wholly inappropriate, your Honor, to simply look at that little slice and just look at the net owed by MCI to World Com and disregard everything else.

We don't think that's the appropriate analysis. We think it is a gross oversimplification of the matter and, at the end of the day, we will demonstrate to this court at confirmation that the entanglement that exists warrants the substantive consolidation that we have proposed.

It is not a simple exercise. Mr. Bentley essentially wants to relitigate the trustee motion.

Now, the record in that case, your Honor, that is, the factual basis for the assertions that the intercompany claims are effectively a simple problem that can be resolved simply through a little triage thoroughly discredits the affidavit and deposition testimony from the expert that was adduced by the movant on the trustee motion, Mr. Walsh, David Walsh, based on the most cursory analysis, based on a process under

which they got together, the lawyers put together a draft of the affidavit, wrote the conclusion and the purported expert then reviewed the conclusion, went out and tried to find some data to support it.

THE COURT: Just to clarify the record, I don't think he was ever offered up as an expert.

MR. STROCHAK: I think that that's correct, your Honor. I think that's correct.

So we don't think it is appropriate to relitigate the trustee motion here and we think for all the reasons that the Court concluded on the trustee motion that the debtors have looked at these issues, had investigated them thoroughly; that the same facts pertain here and demonstrate that there has not been a failure of representation and that no appointment of an additional committee is warranted.

I wanted to just draw the Court's attention to one small detail and the develop is in the detail in these matters.

HSBC has asserted that the existence

of a plan term sheet ostensibly drafted by counsel to Mr. Matland is somehow again evidence that the plan process was taken over by limited groups of creditors who were not representative of the entire creditor constituency.

That was Exhibit U to the Pole affidavit and I don't know if the court has it in front. I'm happy to provide a copy if you don't.

THE COURT: I'm not sure why we are referencing the Pole affidavits.

MR. STROCHAK: Your Honor, I referenced it only for identification purposes.

This document was offered by HSBC in connection with this motion. It was simply identified as Exhibit U to the Pole affidavit previously submitted in connection with the trustee motion. I don't know that it has been assigned a separate identifying motion with respect to these proceedings.

MS. MOSS: Your Honor, if I could just clarify, I did not have a copy of the

stipulated list of exhibits at the time that I referenced that. I do now and I believe that that document was included in the stipulated list of exhibits as were all the documents in the Pole affidavit. I apologize for the confusion.

THE COURT: I understand but the pole affidavit by itself was never admitted into evidence?

MS. MOSS: That's correct.

MR. STROCHAK: That's correct, your Honor, and I'm happy to find the exact exhibit and assist the Court.

THE COURT: That's all right.

MR. STROCHAK: The only thing I want to bring the Court's attention to is the footer.

I don't think there was any testimony adduced at the trustee hearing but the footer indicates that it was prepared on April 15, 2003, which is, in fact, after the debtor's promulgated the plan.

So I don't know what purpose this document served, but it certainly did not serve

as the foundation for planned discussions which occurred and, indeed, were concluded before this document was apparently even created, and the point is to simply illustrate there is a lot of evidence in this record and much of it is being miscited and misleadingly urged upon the Court as a basis for a conclusion that there has been inadequate representation in this case and we simply think that that is not the case here. So we would urge the Court to deny the motion. Thank you, your Honor.

THE COURT: Anyone else?

MR. ZIPES: Good afternoon, Gregg Zipes from the Office of the United States Trustee representing Carolyn Schwartz, United States Trustee who isn't here today.

The United States Trustee is a component of the Department of Justice. As part of her duties, the U.S. Trustee is required to appoint a committee of unsecured creditors in every case under 1102 of the Bankruptcy Code.

1102 of the Bankruptcy Code requires the U.S. Trustee to appoint a representative

committee. It is clear in these cases the U.S. Trustee succeeded and no additional committee need be appointed under the two part test articulated by this court in the case of Enron and by other courts.

With respect to the first part of the two part case, the Court reviewing adequate representation looks at several nonexclusivity factors, which everybody has gone over: The composition of the committee, which is the nature of the case, the desires of the parties in the case and the ability of the Committee to properly function.

THE COURT: Who in your view represents the interests on the Committee as it currently stands? Who is representative of the junior subordinated noteholders?

MR. ZIPES: In analyzing this question in the motion, the U.S. Trustee tried to ensure that MCI had adequate representation on the Committee, so the answer to your question is the MCI holders of debt, and one of the considerations that the U.S. Trustee had to do initially in appointing a committee in this

case was that it was very little pure MCI subordinated debt to creditors out there, if any, to consider for appointment to the Committee.

This request for a subordinated debt committee was only made very recently, your Honor, and there was some reference to a letter, to the U.S. Trustee and a response by the U.S. Trustee.

That was a request with respect to appointment to the current committee. It wasn't a request for an additional committee and in a way that letter and the response, which we believe was mischaracterized, was a bit of a red herring because even assuming HSBC was added to the Committee at that time in response to the letter, the vote on this motion would have been 14 to one.

The Committee indicates in this motion in its objections to this motion it was unanimous in objecting to the motion, and the record is clear in the case that MCI debt is well represented on the committee.

There is some part about what that

debt is exactly, but the number of 47 percent of the number of the committees holding MCI claims is a number that I think this court accepted in its memorandum decision with respect to the trustee motion.

If anything, MCI debt is overrepresented in this case, and the case law does not require that every subgroup within a debtor, subgroup within the creditor constituencies be represented on a committee. It doesn't require those who have a minority position in a case to get their own committee.

The United States Trustee certainly would have been concerned if we had heard allegations that members of the committee had breached its fiduciary duties and had not adequately reviewed the financial affairs of the debtors.

No group has been disenfranchised there and the U.S. Trustee has not heard anything from the committee informally or formally that MCI's interest have not been considered by this committee.

And assuming for the sake of

argument that MCI creditors are not adequately represented or evenly within this subgroup within MCI is not adequately represented, this court may still exercise its discretion in denying the motion under the second part of the two-part test articulated by this test in Enron and Dow Corning and that was effected by the party as well the cost associated and the time of the application, and your Honor asks the movant to focus on the timing of this motion.

This motion was filed after the plan and disclosure statement was filed, and there is some reference, specific reference, in cases to the timing in Dow Corning, the Court at page 143 stated, "Of course, timing is a discretionary factor" and it stated, "Courts are especially sceptical of motions after the debtor has filed a plan of reorganization," and they gave a string of cases that deal with motions filed after the plan of disclosure statement is filed.

So that discretionary element certainly does work against the movants position in this case.

Mr. Bentley stated that it was his opinion that in the event a committee was formed, that, in fact, its attorneys, accountant and financial advisors could be brought up to speed very quickly because they might come from attorneys already associated with the case, and the fact is that that may or may not be the case, your Honor. And in the case of this magnitude and this complexity, appointing another committee at this late stage may, in fact, lead to do a lot of delay in the case and unnecessary delay.

The appointment of an additional committee would increase the complexity, your Honor, and this additional committee would be a coequal to the Committee already in place with the statutory rights and fiduciary duties in this case and it would probably not foster cooperation with respect to the formulation of a plan.

Your Honor, HSBC's interests have obviously been represent in this case both through the active involvement of its own counsel and through the participation of

several informal committees with similar points of view. Even without an official committee, HSBC's rights appear to be protected and this court should not exercise its discretion, assuming we get by the adequate representation factors that we discussed earlier, the first step of the two part test, it should not exercise its discretion to directly appoint any additional committee.

THE COURT: Anyone else in opposition that has yet to be heard from? Miss Moss.

MS. MOSS: Your Honor, could I ask for five minutes, please.

THE COURT: Sure.

(A break from the record was taken.)

MS. MOSS: Thank you, your Honor.

THE COURT: You're welcome.

MS. MOSS: Your Honor, first as to the characterization of our motion by the objectors, we are not requesting a separate committee for the subordinated debenture holders to be clear.

We will take one if the Court finds

that that's appropriate and if that's what the Committee and the debtor and the U.S. Trustee would offer to us, but that is not the basis for relief that we requested and, in fact, the reason, the essential underlying reason for the appointment of a Creditors' Committee separately for all MCI creditors is that it is our view that MCI creditors in this case, all of them, should recover 100 percent.

We should not be prejudiced because the senior holders on the committee determined that they would be willing to take something less than that.

THE COURT: And the answer junior creditors would be willing to take something less than that as well.

MS. MOSS: That's right. But it is the senior's determination to which the objectors point for the proposition that our holders are entitled to nothing because of the contractual subordination.

It is not, in effect, it is not affected necessarily by the trade committee's distribution.

It is to that that they point and say because there is less than 100 percent distribution to the senior holders that the subordinated holders are entitled to nothing.

If they made that determination that they are willing to take, for whatever financial reasons, they are willing to take less than 100 percent all MCI creditors should not be prejudiced by that, particularly the subordinate holders which we represent.

With respect to the issue of breach of fiduciary duties, Mr. Golden makes much of the fact that no allegation of breach of fiduciary duties has been made.

Your Honor, that is not what I have stated before. I'm offering today it is not our claim. It is our claim of the indenture trustee. It is the claim of others and we fully expect that that claim may at some time be brought and I'm sure that the Committee has its own concerns about whether such a claim might be brought.

In fact, they've asked for exculpation in the amended disclosure statement

from such claims, so to say we have not alleged a breach of fiduciary duties is really an inappropriate objection to this motion.

THE COURT: That goes back to where we started from, if MCI creditors put aside the junior noteholders for a moment, if MCI creditors are adequately represented on a committee, then what would the rationale be for a separate committee but for some breach of fiduciary duty?

MS. MOSS: Your Honor, I think the cases say that there does not have to be conduct that rises to what someone might characterize as a breach of fiduciary duty. I think that the cases look to the issue of conflicting interests.

THE COURT: In terms of adequacy of representation?

MS. MOSS: Yes.

THE COURT: So you are saying and, again, just for argument saying, put aside the junior noteholders, that you believe that the conflicting interests as in the trade creditors who have desire or willingness to continue to

do business with the debtor taints their judgment somewhat so that it constitutes a conflicting interest?

MS. MOSS: I am saying -- I'm trying to be careful not to say that any particular committee member has acted in such a way that we presented evidence of any particular committee members conduct in such a way as to taint the process.

What I'm saying is that taken as a whole, when you look at the entire picture, which is how you have to look at it, that the composition of the Committee is ineffective to carry forward the rights of the MCI creditors as an entire creditor body.

I'm not saying this particular creditor did X or Y and breached the fiduciary duty. I'm saying look at the composition of the entire committee and you can draw but one conclusion.

When you look at not just that, but then you add on top of it the involvement of Mr. Matland and the process, you come to the conclusion that you've got domination by

creditors who have claims against the World Com, enormous claims against the World Com and Intermedia debtors, overshadowing the creditors whose debtors hold virtually all of the assets.

THE COURT: Wouldn't you expect that those creditors would resist and in the context of the plan negotiation and Creditors' Committee negotiation if the MCI creditors who are sitting on the committee were being hurt in any way or dominated to the extent that they were relinquishing some of their rights or they were being harmed in general by this plan, don't you think that they would react?

MS. MOSS: Your Honor, the statute doesn't require a member of the committee to come forward and say, you know, something is wrong in River City. Okay. Anyone can bring this motion.

THE COURT: I didn't suggest you couldn't. I'm trying to get at least you to respond to my question and see what makes sense.

It makes sense to me that when

committee members who may represent debtors who allegedly have 90 percent of the assets end up with 33 percent of the recovery it is one or two conclusions you can draw, or three conclusions.

Either they really don't believe they have 97 percent of the assets or if they do have 90 percent of the assets and that those debtors entities have some other reason for entering into this agreement where they get 33 cents or 36 cents on the dollar, and then you have to consider whether there was a breach of fiduciary duty.

You don't want to the come out and say it but that's all that's really -- if you take outside the juniors, you have the seniors and you have the MCI trade creditors and any other holders, I may not be clear about now that is sitting on the committee.

Now one says, if they have 90 percent of the assets, why did they settle for anything less than 90 percent of the recovery and,.

Obviously they did, then why did

they do it? To whose detriment did they do it?

And I think your motion, whether you say it or not, is to the detriment, the overall detriment to MCI, not just the juniors.

And, again, to put the juniors aside, you are seeking a committee for the MCI creditors when the MCI creditors are sitting on a committee that currently exist and are not complaining that they are not being heard and certainly when you made this motion and sought a committee for MCI creditors, one would have thought, even if they were silent as they were sitting on a committee and they were dominated in every way, they would rise up today and say, you know, you're right. We are sitting on this committee. We have 40 percent representation. We have 90 percent of the assets. You know, this is not a bad idea that we have separate representation and pursue the interest of MCI.

MS. MOSS: Your Honor, they clearly have other interests. There is no -- I don't think anyone disputes that the creditors who are sitting on the committee have other

interests.

Now, they may have for whatever reason thought that based upon their claim and the nature of their claim or how they acquired their claim that the present plan for them is a wise deal. That does not mean that when you look at the assets of these debtors, the MCI debtors and you look at the debt --

(An interruption in the record.)

THE COURT: Let's take a five-minute break.)

MS. MOSS: Your Honor, to respond to your question, I think that the Court is making some unwarranted assumptions about the behaviors of committees and committee members.

The MCI senior holders that we are discussing are distressed investors like the creditors who sit on many credit committees are --

MR. ROSNER: Your Honor, I have to interrupt. There's been a lot of mischaracterization.

THE COURT: You will have your opportunity.

MR. ROSNER: That's just wrong.

THE COURT: Excuse me. It is wrong for you to speak out. Sit down. Thank you.

Finish what you are saying, please.

MS. MOSS: Your Honor, these creditors have other interests obviously besides their broader duties to the credit body as a whole.

Why do people go to sit on a committee? They want to sit on a committee, to start with, so that they can maximize the value of the return on their own investment, whatever it is.

To these creditors, for whatever reason, 80 cents or 70 cents or 90 cents may be a good recovery. That doesn't mean --

THE COURT: That may not. But I think you may think that I or as I stated have a misconception about committees.

I think you may have a misconception of the fiduciary obligation of committee members and I'm not interested on whether they want to continue to do business with the debtor or not, whether they all or they bought the

bond for less than value, original value whatever they are, they still have a fiduciary obligation, and the ad quasi of representation comes from what vantage point, what view do you have of this case as a creditor?

That's the adequacy and the attempt to integrate these various parties into the Committee process.

But the fiduciary obligation still requires the person to step back, say what's in the interest of these estates, and you can't just, I think, just ignore that and say, well, because the trade creditors want to do business with the debtor.

If that were the case, then one would wonder how you could ever have a committee until they were pure. They would have to be trade committees on the creditors on the committee that continue to do business with the debtors creditors that aren't going to do business with the debtors. Banks who want to have a continued relationship with the debtor. Banks who just want their loan paid.

You'd have to have landlords on

whose leases get rejected and landlords on that may get their leases assumed.

How in the world would you ever have a committee composed to reflect the debtors creditors constituency unless you superimposed on all of them the fiduciary obligation to act in accordance with the interest of the estate?

MS. MOSS: Your Honor, we obviously don't disagree that there is a superimposed fiduciary obligation.

To the extent that this court can determine based upon the facts that have been presented on this motion and in connection with the trustee motion that the creditors, the only creditors committee may have breached the fiduciary committee in the way they do.

We assert they acted in a certain way so as to not advance the interest of MCI creditors as a creditors body.

THE COURT: Didn't they have a fiduciary obligation to consider the interests of the MCI creditors?

MS. MOSS: Yes, they did.

THE COURT: You are saying their

actions whether intentional or not didn't fulfill that obligation?

MS. MOSS: We are saying that their action did not appropriately or adequately represent the interests in accordance with the requirements of Section 1102, yes.

THE COURT: Okay.

MS. MOSS: To the extent the Court's view that subsumes some other issue is a breach of fiduciaries duties, we are saying there is a confluence of factors here that have occurred, not just a fact that trade members on the committee are getting a cure amount.

So maybe their view is if somebody gets 30 cents or 35 cents that that's okay for them. Not just that the MCI seniors have, you know, perhaps as investors made a determination that 80 cents is good for them, not just that there was a domination by creditors of World Com and Intermedia on the committee, not just that there was somebody leading the charge for the plan development who wasn't on the committee and who was a World Com bond holder, one of the largest claims in the case, what I'm

saying is that when you put all of those things together, the process failed, and to the extent -- and as a result, it excluded and it did not appropriately carry forward the rights and the interests of MCI creditors.

THE COURT: Mr. Rosner, did you want to say anything?

MS. MOSS: I had a few other points I would like to meet unless you would like to hear from him.

THE COURT: No. Go ahead. Finish your presentation.

MS. MOSS: Your Honor, I would also add to that, in the debtors presentation, Mr. Strochak made a remark that everyone came to the table with the understanding.

Everyone came to the table with the understanding that less than 100 percent would be paid to the MCI creditors. That is evidence of my point, okay.

That if that is the understanding everyone came to the table with to start with without even investigating the validity and enforceability of these intercompany claims

there is already a fracture in the process as far as the MCI creditors are concerned.

As for the timeliness issue, when is the right time?

Maybe the Court can tell us exactly when and under circumstances like this would be the right time?

How could we know what is going on in a committee from which we were excluded and the statute is, as I pointed out before, does not require a committee member to come forward and say something is going wrong. How does anybody else know that something is going wrong until a plan is filed and a plan that provides for substantive consolidation?

We did everything or HSBC should be entitled to a different standard than a committee member who sits by idly on the committee while something is going wrong with the process and says nothing. That's not what happened here.

We weren't on the inside of the process. We were observing from the outside and doing everything we could to try to get on

the inside.

THE COURT: Well, when you observe from the outside I think you are certainly limited to your perception of what the people on the inside are doing and whether or not they fairly and adequately represent your interests.

And what I've said earlier, and I will say it again, for a long period of time, nobody did anything to challenge the composition and now that that composition produced a result different than what the parties thought would be the interaction on the committee, I question whether or not that warrants a separate committee as much as it warrants to continue to raise issues with respect to the main issue, which is really the substantive consolidation issue.

MS. MOSS: Your Honor, we made two very timely requests to the U.S. Trustee to be appointed to the Committee, timely because no plan had yet been proposed and, in fact --

THE COURT: And when you didn't get the answer, what did you do about it?

First of all, I question this timeliness because you can't escape the reality that you don't inherit greater rights than whose place you took.

And if the first indenture trustee did not think it was warranted to act in August and September and all the other months leading up to the appointment of the change in who the indenture trustee was, you just can't walk away and say, well, they didn't do it. I just first came on the scene and I acted promptly.

You take that position as it was and it was vacated and, not vacated, but when you took their place.

And, second, if you say that you requested the U.S. Trustee and they denied your request, they didn't respond to your request, you still have recourse here, but no recourse was taken and you knew -- let me just finish.

Everyone knew 100 days prior to April 15th or April 14th that a plan was coming out, and it was a statement made by the new CEO on the 100 day plan, and when you knew that 100 day plan began, if you didn't think that you

were adequately represented on that committee and you had requested the U.S. Trustee to put you on that committee and either you didn't get an answer or you didn't get the answer you wanted to, I still didn't hear from you until after the plan is promulgated and you are told when it is going to be promulgated.

MS. MOSS: Your Honor, there was no plan promulgated at the time that we became appointed as successor and in indentured trustee.

In fact, there was no settlement even reached at that point in addition to requesting appointment to the Committee by the U.S. Trustee and, of course, there were a number of follow-up phone calls made to the U.S. Trustee in conjunction with our letters.

We haven't put all that information in before the Court today in the form of an affidavit, but I will represent to the Court I personally made several telephone calls in an effort to follow up on those requests and there was no response given and at that point we did contact the debtor.

We signed a confidentiality agreement. We gave them the opportunity to open the channels of communication.

To imply that, as the debtor implied, that we could have submitted a plan proposal to the debtors firm is really kind of silly, I think.

Under the circumstances of this case, I hardly think it would have been given much deference by the debtor.

We did everything we could to interject ourself into the process, by communicating with counsel on various parties and making an attempt to be included in the discussions.

It was only at the time that the plan was filed that it became apparent that there was no intention on the part of anyone to include us in that process.

Mr. Strochak cited some testimony by Mr. Savage to the effect that in his view, Mr. Savage's view, the quips were getting a recovery of the subordinated members were getting a recovery.

I really couldn't quite believe my ears when I heard that before, since we went through this with several changes post petition with the debtor, several debtors disclosure statement as to whether quips were or weren't getting recovery and what I thought we were getting the other day was Ms. Goldstein's assertion that the committee's disclosure statement would make clear there is no distribution to us quips.

So Mr. Strochak to cite testimony of Mr. Savage that is inconsistent with the position that the debtor has not confirmed with the Court to clarify all of this confusion is really kind of absurd.

Your Honor, in terms of the issue of what a committee could do at this point and moving forward towards confirmation, in any case the main purpose of a committee ultimately is to deal with the issue of plan treatment. There is nothing nefarious about that.

That if a committee was appointed now that it would be involved or maybe object to the plan process. We don't know what that

committee is going to do.

As the Court has pointed out, that committee would have fiduciary duty to all the MCI creditors. No one can say what position they would have to take.

We certainly know that they will be charged with investigating what the proper recovery is to MCI creditors in the case, but to say that, you know, or to somehow characterize their potential objection to confirmation as some reason why they shouldn't be, there shouldn't be a committee appointed is really just turning the whole process just upside down.

And, finally, your Honor, the U.S. Trustee made an interesting or Mr. Zipes on behalf of the U.S. Trustee made an interesting comment.

He said if we had been appointed to the Committee, if HSBC had been appointed to the Committee then our involvement would not have made any difference on this committee, and, honestly, that's the whole point of this motion. That our involvement clearly would not

have made any difference on this committee as it is presently constituted, so we agree with that point.

THE COURT: I think he said it wouldn't have made any difference with respect to, and I'm not sure if it was his view or someone on the Committee, I think it was his analysis with respect to this motion and not that it would have any impact on the committee because his view was that this motion was opposed by the Committee 14 to zero so had you been placed on the committee in sort of a separate committee.

He then took the position that it would be 14-1 for a separate committee. That assumes a lot of things, whether or not he would have sought a separate committee had you been put on a committee, but --

MS. MOSS: Well, your Honor to the extent that the U.S. Trustee did not make appointments, and I think it is clear that if we had been on this committee as it is presently structured, chances are pretty good that it would not have made a difference.

THE COURT: Mrs. Rosner, do you want to make a statement?

MR. ROSNER: David Rosner from Kasowitz, Benson. I'm attorney for MCI noteholders committee.

Your Honor, number one, I'm sorry for yelling out. That was disrespectful and inappropriate.

Number two, the three members of the MCI noteholders committee that sit on the official World Com committee, two of those holders, New York Life and Met life are par holders and are not secondary purchasers. One member Elliot Associates is a secondary purchaser.

Number three, to the extent that the Court attaches any significance to the February 11th letter to this proceeding to which I don't, I would just suggest that there are two places in that letter in which I confirm that all members of the World Com committee act as fiduciary for all creditors of this estates, both MCI as well as World Com creditors.

And number four, I would just simply

suggest that the Creditors' Committee was but one party to the planned negotiations that resulted in the plan that is currently before the Court.

Neither their adherence to their fiduciary duty nor the application of fiduciary duty was the sole generator of the plan that is before the Court. There were many parties that negotiated. The Creditors' Committee was one. Thank you, your Honor.

THE COURT: All right. Thank you. Anyone else? Go ahead. Very briefly.

MR. BENTLEY: I would like to respond to a couple of points made by Mr. Strochak.

Two basic points that he addressed. First what natural issues the Court should look at in crafting its decision and rulings on this motion.

Second, what the evidence shows on those couple of key points that he felt was most particularly on, and I would note that at the outset that what's significant about Mr. Strochak is that of the several objectors

that spoke, Mr. Strochak is the one that ventured to address the record evidence of what has happened here.

First, as to what the Court should look at in the record evidence, we agree with the basic point he made, and that is, and it is a point that the Court was picking up on and addressing with Miss Moss, in ruling on the motion like this, the Court should not be focusing principally on what are the particular holdings of each committee member and do they match the particular constituencies in the case because as the Court has noted that can never be gotten exactly right in a committee.

What really matters and what the Court should focus principally on, as Mr. Strochak said, is not what debt the representatives hold but what the representatives have done during a case, or by extension what they have not done.

Mr. Strochak then turned to what does the evidence show on that, and what's most significant, your Honor, I listened very closely to see if he challenged or rebutted the

key factual points that we have been making that I summarized in my presentation and Miss Moss did as well as to the what the committee failed to do, and most of our key points he just didn't dispute because we think he can't.

He didn't dispute that there was no serious attempts to look at these enormous royalty claims, the 19.5 out of the total 24.

He didn't dispute that those accounts account for the great bulk of the intercompany claims or even that there is so little left of intercompany debt if you knock out the royalties in their entirety what remains is small enough that the MCI companies are solvent and can pay their creditors in full.

He didn't dispute any of that simply because he can't I think.

He made one basic point, one basic point to defend the Committee's conduct in not looking at these central issues, and that is he said, in conclusory fashion, he said it is very misleading the way my clients have characterized the intercompany claims.

He said it is very misleading to look, as we urge, only at the net balance, the net debt that is owed by the MCI companies rather than go transaction by transaction.

But what's striking your Honor, what I think is most significant and that I urge the Court to take note of is that he didn't give any explanation whatsoever. He didn't even try to explain why this is supposedly a misleading or wrong way to look at these claims.

We think that it is self-evident that this is a proper way to look at the claims.

For example, an auditor would look at the net balance and would not examine every single underlying transaction, which is the approach the Committee has focused on. They would sample. They would sample representative or random.

THE COURT: They would but they would sample from the entire base, not from a difference.

If you are going to do an audit, you do it of the transactions and then you would

draw a conclusion based on your sampling, but if you're saying to me that once one statement indicated $100 going one way and the other was one 120 coming back you would only look at the $20 difference and sample that you still have to look at would you look at every one of them or sample. You are not just focusing on the net.

MR. BENTLEY: I agree with what your Honor just said. I think we are saying the same thing.

Your Honor would look it what's the net balance and then to probe beneath it he would pull out or sample certain of the underlying transactions. Not every single one but he would pick whatever in the book of auditing principles is considered to be a proper number of randomly selected samples, and you Honor may be familiar with auditing. The samples that are selected are a very small fraction of the total number.

And what's striking in this case is that no consideration appears to have been given. There is absolutely nothing in the

record, nor did Mr. Strochak make any assertions that any consideration was given to any approach short of looking at every single transaction.

Now, the final point that Mr. Strochak made on this subject is that he suggested to the Court that our position, the objector's position, rests entirely on the affidavit that was the presented by David Walsh of Alvarez and Marshall as having been characterized as being thoroughly discredited.

Now, I think we can put aside for today's purpose when Mr. Walsh was thoroughly discredited and if would were to look at the entirety of the deposition transcript rather than excerpts that is pulled out of the hearing I think one could reach a very different conclusion.

But for today's purposes the important point is these are not conclusions that are supported only by Mr. Walsh or only by his firm. These are conclusions that our clients experts have reached.

We have retained independent experts

who have credentials that will be presented to the Court down the road and cannot be impeached, and they have reached the same basic conclusions that the approach is to look at the net balance and then do appropriate sampling but not by any stretch look at every single transaction.

And this is a point that even though it is a point that in some way is self-evident and it is consistent with generally auditing principles we have not heard one word from Mr. Strochak or any one on his side explain why that's not the proper approach or why the Committee chose not to pursue that approach at all.

And just to sum up, your Honor, that failure, the failure to look into that or to look into the royalties or to look into the other ways in which the MCI creditors were being unfairly treated under the plan, that is the central failure of what the Committees representative failed to do then in our view warrants the appointment of a new committee. Thank you, your Honor.

THE COURT: Anyone else? I want to try to rule by 7:30 tonight. If I'm not able to do that, I will let you know at or around that time.

(A break from the record was taken.)

THE COURT: Case 1102(a)(2) of the Bankruptcy Code permits the Court to order the appointment of an additional committee to ensure adequate representation. Therefore, this court must determine whether the movants are adequately represented by the existing committee.

Courts have generally applied the following factors on a case-by-case basis analyzing had adequacy of representation, the ability of the committee to function, the nature of the case and the standing and the desires of the various constituencies, see McLean 70 B.R. 852.

Other considerations include the ability for creditors to participate in a case even without an official committee and the potential to recover expenses pursuant to Section 503(b) whether the different classes

may be treated differently under a plan and need representation, the motivation of the movants, the cost incurred by the appointment of additional committees and the tasks that a committee or separate committee is to perform, in re Enron Corp. 279 B.R. 671 and cases cited therein.

Some courts have found inappropriate to divide its consideration into two components.

First, the Court must decide whether the appointment of an additional committee is necessary to assure the movants are adequately represented.

Second, if the answer to the first question is yes, then the Court must decide whether it should exercise its discretion and order the appointment, in re Dow Corning Corp., 194 B.R. 121, in re Wang Labs, Inc., 149 B.R. 1, 2.

Discretionary considerations include the cost associated with the appointment, the time of the application, the potential for added complexity and the presence of other

avenues for a creditor participation, Dow Corning 194 B.R. in re Hills Stores, 137 B.R. 4, 5 through 8 ad hoc bondholders Group versus Interco, Inc. 141 B.R. 422, 424.

The burden is on the moving party to prove that the existing committee does not provide adequate representation, Dow Corning 194 B.R. at 144.

The decision concerning an additional committee involves a delicate balancing of various and sometimes diverging interests. The formation of a Creditors' Committee is "Purposely intended to represent the necessarily different interests and concerns of the creditors it represents," Andrew Denatale et al., Powers Functions and Duties of Creditors' Committee, 767 PLI/Comm 791, 1998.

Moreover, ordering the appointment of additional committees is an extraordinary remedy, Sharon Steel Corp., 100 B.R. 767 in re Texaco, Inc. 79 B.R. 560, (Bankruptcy Southern district of New York, 1987).

An indication of whether a committee

adequately represents its constituents is its ability to function. A committee that is hopelessly divided, unable to take a position on important matters and ineffective would clearly support an argument for a separate committee. See Enron 279 B.R. at 686.

The movants have not referenced any incident where the Creditors' Committee has not been able to function. The Committee opposes the appointment of an additional committee. In addition, the Creditors' Committee supports the proposed plan of reorganization.

Nevertheless, even a functional committee may not adequately represent a particular group of creditors where one group of creditors is so controlling that the other group has no voice in decision making.

Therefore, courts also look to see whether conflicts of interest on a committee effectively disenfranchise particular groups of creditors, Dow Corning 194 B.R. at 142.

In these cases, these debtor cases, there have been no claims made by the Creditor's Committee that the Creditors'

Committee has not permitted the MCI creditors to be heard. In addition, the movants did not file their motion for a separate committee until after the plan negotiation process had concluded and the parties had reached consensus on the issue of substantive consolidation.

Thus, the real complaint is with the result of the negotiation process and a consensus reached by the Committee members, not that other committee members controlled the MCI creditors on the committee.

The second factor that courts often use in analyzing the adequacy of representation is the nature of the case, such as where it is a large complex case, see in re Beker industry Corp., 55 B.R. 945.

While certain complex multi-debtor, multi-business cases lend support for the appointment of additional Creditors' Committee, see in re Hills Store 137 B.R. at 6, McLean, 70 B.R. At 862, the size of the case alone is not determinative, Enron 279 B.R. 688.

Where there are a variety of parties and interest in a debtors case, the nature of a

case may be that appointing additional committees may not provide a solution. Indeed, adding additional committee might intensify conflict and lead to further complication.

Courts are reluctant to add a committee to please one group of creditors if that group is already represented on a Creditors' Committee and additional committees will only create further discord, litigation and delay, Enron 279 B.R. at 688.

In such cases, the appointment of an additional committee will not eliminate tensions but would rather 'will only weaken the impetus to compromise'. Sharon Steel 100 B.R. at 779.

The Committee members are charged with the responsibility of acting as fiduciaries to all creditors represented by the Committee and the successive cases often depends on the members of the Committee negotiating to reconcile their disagreements and reach a consensus within that single committee.

Indeed, the conflict among creditors

and among members of Creditors' Committee is common and may actually facilitate negotiation, see Dow Corning 194 B.R. at 145.

These conflicts only become an issue if they hinder adequate representation, Orfa, 121 B.R. at 295; McLean, 70 B.R. at 861.

However, the fact that certain creditors represented by a committee are unable to 'protect all their interests and achieve all their goals is not paramount, as the ultimate aim is to strike a proper balance between the parties such that an effective and viable reorganization of the debtor may be accomplished.' See Hills store 137 B.R. at 7.

The fact that all creditors do not have identical interests is recognized by the Bankruptcy Code's procedural framework for dealing with 'various divergent interests,' see Official Unsecured Creditors' Committee versus Stern 984 Fed second 1305 First Circuit, 1993.

The standing and desires of various constituencies is a third factor to consider when determining whether there is adequate representation. The issue is not whether a

Creditors' Committee is an exact replica of the creditors body but whether representation of various creditors type is adequate. See hills store 137 B.R. at 7.

As this Court found in its decision denying the motions to appointment a trustee to the MCI debtors, the Committee is currently comprised of 14 members representative of the broad spectrum of debtors' creditors, including bond holders and indentured trustees of World Com, Inc., MCIC Intermedia as well as MCI trade creditors. Further, at least six of the 14 members of the committee are creditors of MCI. Thus over 40 percent of the committee in number is made up of MCI creditors. Thus, over 40 percent of the Committee in number is made up of MCI creditors.

It has been argued that the concern regarding adequate representation is not that there are not sufficient number of MCI creditors on the committee. Rather, the complaints stems from the fact that the MCI creditors who are members of the Committee seem to have acted in interests of the World Com

creditors to the detriment of the MCI creditors, either because they advanced the interests of certain of their holdings other than MCI interests or because their desire to continue post confirmation business relationship with the debtors, or because they were solely concerned with MCI's senior interests.

However, it appears that the dissenting MCI creditors primary concern is the consensus reached regarding substantive consolidation and the intercompany debts.

These issues will be fully addressed during the confirmation hearings and all parties have the ability to be heard and participate in those hearings.

Nevertheless, it is almost always true that various creditors have distinct interests from those of other creditors, but those interests are protected by the fiduciary duties committee members have to all creditors and by the active participation of creditors with sophisticated counsel. See Sharon Steel, 100 B.R. at 779.

The Committee's decision to support substantive consolidation of these cases is at the forefront of creditors' argument. However, the positions of the parties on substantive consolidation will be heard through their able counsel at planned confirmation hearing. Moreover, in addition to the MCI creditors on the Creditors' Committee, there are additional MCI creditors that have actively participated in these cases, as well as representation of MCI creditors by ad hoc committees.

In considering the factors utilized by courts in determining whether the current committee is providing adequate representation, as well as the particular facts and circumstances of this case, the Court finds here that the Creditors' Committee representation of the MCI estates is adequate.

However, with respect to the movant, the indenture trustee for the MCI junior noteholders, it has to present a more compelling argument that the MCI junior noteholders may not be adequately represented on the committee. No member of the Committee

represents this type of subordinated debt.

Other than the general fiduciary duty the committee members owe to all creditors, the junior noteholders are not represented on the committee, at least with respect to a hold or only MCI junior notes.

Further, the fact that certain MCI creditors who are on a committee may hold a small amount of junior interests does not necessarily provide the junior noteholders with adequate representation under the facts of this case.

Nevertheless, the movants have not pointed to any requirement of every sub-debt group would need separate representation on a committee.

In any case, even assuming that the junior noteholders are not adequately represented, the relief sought by the MCI junior noteholders for a separate committee for all MCI creditors is far too broad and unnecessary.

As already noted, the general credit body of the MCI states has been adequately

represented.

More on the committee. Moreover, based on the consideration of the discretionary factors that the Court must evaluate to consider whether to point an additional committee, whether it be for the junior noteholders or for all the MCI estates, the Court concludes that the motion should be denied.

The movants waited until negotiation for a plan of reorganization was concluded before filing the motion.

Now, as this court found in its decision two weeks about concerning the appointment of a trustee, many of the issues raised in the motion were known to the parties in interest at the start of these cases.

Certainly, with respect to a planned negotiation process, it was publicly disseminated that the debtors were on a 100 day plan leading to the filing of the reorganization plan.

To the extent that junior noteholders believed that their interests were

not adequately represented at that stage, clearly they were obligated to seek proper relief or be subject to criticism for their inaction.

Further, although they may have made a timely request to the U.S. Trustee's office with respect to the planned negotiation process, nothing was brought to this Court's attention until the planned negotiation was concluded. Thus, the movants waited until learning of the compromise reached as a result of the negotiations to bring their complaint to the court.

The disclosure statement concerning the plan of reorganization has been approved, and the court has scheduled a hearing for consideration of confirmation of that plan for August.

The formation of a separate committee for the MCI estates at this stage would cause upheaval in the existing committee in that the MCI members would likely seek appointment to a separate MCI committee, which would not necessarily advance the junior

noteholders interest. The debtors reorganization would likely be delayed.

In addition, the underlying issue of fairness of substantive consolidation would still have to be litigated.

Moreover, an additional committee will add cost to the estate as the Committee will retain its own professionals paid for by the estate.

Further, the movants have an avenue to participate at the planned confirmation hearing and if their contentions are correct concerning substantive consolidation and intercompany debt, they have a basis for compensation under Section 503(b).

Thus, considering the costs associated with the appointment, the timing of the application and the potential for added complexity, as well as the presence of other avenues for the movants to participate at the hearing concerning planned confirmation, the Court concludes that the appointment of a separate committee for the MCI creditors is not warranted.

Further, a separate committee for the junior noteholders, although raised for the first time at the hearing in colloquy with the court, would do little to advance these cases at this time.

Debtors counsel is directed to submit an order consistent with this court's ruling.

(Time noted: 8:25 p.m.)

C E R T I F I C A T E

I, MICHAEL WILLIAMS, a Certified Shorthand Reporter and Notary Public of the State of New York do hereby certify that the foregoing is a true and accurate transcript of the within proceedings, to the best of my ability.

Michael Williams

MICHAEL WILLIAMS, CSR
License No. XI01991
Notary Public of the
State of New York

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11 Case No.**
WORLDCOM, INC., et al.,	:	**02-13533 (AJG)**
	:	
	:	**(Jointly Administered)**
Debtors.	:	

ORDER DENYING MOTION OF HSBC BANK USA, AS INDENTURE TRUSTEE, FOR ENTRY OF AN ORDER DIRECTING THE APPOINTMENT OF AN OFFICIAL COMMITTEE OF CREDITORS FOR MCI COMMUNICATIONS CORPORATION AND ITS SUBSIDIARIES

A hearing having been held on May 28, 2003 (the "Hearing") to consider the motion, dated April 30, 2003, of HSBC Bank USA, as indenture trustee, for entry of an order directing the appointment of an official committee of creditors for MCI Communications Corporation ("MCIC") and its subsidiaries (together with MCIC, "MCI"), dated April 30, 2003, 2003 (the "HSBC Motion"); and joinders in the HSBC Motion, dated May 21, 2003, May 22, 2003, and May 27, 2003 having been filed with the Court by Wilmington Trust Company, as property trustee and guarantee trustee, Aerotel LTD., and the Dissenting MCI Bondholders, respectively (the "Joinders," and together with the HSBC Motion, the "Motion"); and the affidavit of Tina Niehold Moss, dated May 23, 2003, in Support of the HSBC Motion (the "Moss Affidavit"), having been filed with the Court; and the memorandum of law in support of the HSBC Motion, dated May 23, 2003 (the "HSBC Memorandum") having been filed with the Court; and the objections to the Motion, dated May 22, 2003, May 23, 2003, and May 26, 2003 of the United States Trustee, WorldCom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), and the Statutory Committee of

Unsecured Creditors, respectively (collectively, the "Objections") having been filed with the Court; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the appearances of all interested parties having been noted in the record of the Hearing; and the Court having considered the HSBC Motion, the Joinders, the Moss Affidavit, the HSBC Memorandum, the Objections, and the evidence adduced and arguments of counsel at the Hearing; and upon the HSBC Motion, the Joinders, the Moss Affidavit, the HSBC Memorandum, the Objections, and the record of the Hearing; and the Court having made findings of fact and conclusions of law as set forth in the record of the Hearing; and the Court having found and determined that the representation of the creditors of MCI by the extant Statutory Committee of Unsecured Creditors is adequate as required by section 1102 of title 11, United States Code (the "Bankruptcy Code") and that the appointment of an additional committee pursuant to section 1102 of the Bankruptcy Code is not necessary to assure adequate representation of creditors of MCI; and for the additional reasons set forth in the record of the Hearing, it is therefor hereby

ORDERED that the Motion is denied.

Dated: New York, New York
May 30, 2003

s/Arthur J. Gonzalez
United States Bankruptcy Judge